16-464

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1159.

E. A. CLARK, TAX-COLLECTOR, &c., PLAINTIFF IN ERROR,

vs.

JOHN Y. KEITH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED NOVEMBER 13, 1882.

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a TRANSCRIPT OF RECORD IN THE CASE OF E. A. CLARK, TAX COLLECTOR, &C., PLAINTIFF IN ERROR, VS. JOHN Y. KEITH, DEFENDANT IN ERROR, FROM SUPREME COURT OF TENNESSEE TO SUPREME COURT OF UNITED STATES.

B. J. Lea, John H. Savage, S. F. Wilson, atty's for pl'ff in error.
A. S. Colyar, Spl. Hill, McPhail Smith, A. W. Campbell, att'ys for def't in error.

1, 2 THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at Jackson, on the first Monday of April, A. D. 1882.

Present, the Hon. Jas. W. Deaderick, chief justice, and Robert McFarland, Wm. F. Cooper, Thos J. Freeman, and Peter Turney, judges, to wit:

Be it remembered that heretofore, to wit, on the 25th day of April, 1881, a transcript of the record in the case of E. A. Clark, tax-collector, &c., against John Y. Keith, was filed in the office of the clerk of said supreme court at Jackson in the words and figures following, to wit:

3 THE STATE OF TENNESSEE:

Pleas before the "law side" of the "common law and chancery court of the county of Madison," at a term thereof, begun and held in the court-house in the city of Jackson, county and State aforesaid, the 2nd Monday, being the day of February, in the year of our Lord 1881. Present, the Hon. Henry W. McCorry, judge, &c.

Be it remembered that heretofore, to wit, the 2nd day of June, 1880, the following procedendo from the supreme court of Tennessee was filed in the office of the clerk of the law court aforesaid, viz:

THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at Jackson, on the first Monday of April, A. D. 1880.

4 Present, the Hon. James W. Deaderick, chief justice, and Robert McFarland, Wm. F. Cooper, Thos. J. Freeman, and Peter Turney, judges, to wit:

TUESDAY, *May 28th*, 1880.

E. A. CLARK, REV. COLLECTOR, &C.
vs.
JOHN Y. KEITH.

In this cause the Hon. Thomas J. Freeman having certified his incompetency to the governor, who appointed and commissioned Josiah Patterson, esq'r., of the "Memphis bar," special judge, to sit on the hearing of this cause, in the place and stead of Judge Freeman, and the said Josiah Patterson having taken the oath prescribed by law took his seat on the bench, and his commission and oath are ordered to be entered on the minutes in the words and figures following, to wit:

5565——1

5 THE STATE OF TENNESSEE:

Albert S. Marks, governor, to all who shall see these presents, greeting:

Know ye, that whereas the Hon. Thomas J. Freeman, one of the judges of the supreme court of Tennessee, has certified to me his incompetency to set on the trial of the cause of John Y. Keith vs. E. A. Clark, revenue collector, &c., pending in said court at Jackson, Tennessee: Now, therefore, I, Albert S. Marks, governor of the State of Tennessee, by virtue of the power and authority in me vested, do commission Hon'l. Josiah Patterson, of Shelby County, to fill said office of special judge to try said cause of John Y. Keith vs. E. A. Clark, revenue collector, agreeably to the Constitution and laws, during the term, and with all the power, privileges, and emoluments thereunto appertaining by law.

6 In testimony whereof, I, Albert S. Marks, governor of the State of Tennessee, have hereunto set my hand and caused the great seal of the State to be affixed, at Nashville, this twenty-sixth day of May, A. D. 1880.

GREAT SEAL OF THE STATE OF TENNESSEE.

ALBERT S. MARKS.

By the governor:
CHAS. M. GIBBS,
Secretary of State.

THE STATE OF TENNESSEE:

I, Josiah Patterson, do solemnly swear that I will support the Constitution of the United States and of the State of Tennessee, and administer justice without respect to persons, and impartially discharge all the duties incumbent on me as a judge of the supreme court of Tennessee, to the best of my skill and ability. And I do further swear that I have
7 not, directly or indirectly, given, accepted or knowingly carried a challenge, in writing or otherwise, to any person, being a citizen of this State, or aided or abetted therein, since I have been a citizen of this State, nor since the adoption of the constitution of 1870, and that I will not during my continuance in office be guilty of either of these acts.

JOSIAH PATTERSON.

Sworn to and subscribed before me in open court this 28th day of May, A. D. 1880.

JAMES W. DEADERICK, *C. J.*

And on, to wit, Wednesday, June 2, 1880, the following appears of record in this cause:

E. A. CLARK, TAX COLLECTOR,
v.
JOHN Y. KEITH.

The parties appear by their attorneys, and thereupon the record,
8 proceedings, and judgment of the court below in this cause being seen and fully understood by this court, and it appearing that in the same there is manifest error, it is therefore considered that the judgment afore-

said be reversed and annulled, and this cause remanded to the "law side" of "the common law and chancery court of Madison County" for a new trial therein, and that the plaintiff in error recover of the defendant in error the costs of this appeal, for which let execution issue. And on application of counsel for the defendant in error, it being shown to the court that the original bills or notes of the Bank of Tennessee on which this suit was founded were sent up with the record from the court below, it is ordered that said defendant in error have leave to withdraw said bills & notes, and the clerk of this court will deliver the same to said de-
9 fendant in error or his attorney of record.

The Hon. Thomas J. Freeman, having certified his incompetency in this cause, did not sit with the court in the hearing thereof; but Josiah Patterson, esq'r, having been appointed and commissioned by the governor as special judge in the place and stead of Judge Thomas J. Freeman, the record of his appointment with his commission having been heretofore entered on the minutes, sat with the court in the hearing of the cause and rendition of this judgment.

Opinion.

JOHN Y. KEITH)
v.
E. A. CLARK, TAX COLLECTOR.)

Appeal from the law side of the common law and chancery court of Madison County.

10 The Bank of Tennessee was chartered in the year 1838. The 12th section of its charter was thus:

"Be it enacted, that the bills or notes of the said corporation, originally made payable, or which shall have become payable, on demand, in gold and silver coin, shall be receivable at the treasury of this State, and by all tax collectors and other public officers, in all payment for taxes or other moneys due the State."

It was settled in the case of Furman vs. Nicholds, 8 Wall., 44, that this provision in the charter was a contract within the meaning of the Constitution of the United States between the State of Tennessee and every holder of the issues of the bank, and that it was obligatory on the State to receive the same in payment of taxes or other moneys due the State. The State of Tennessee on the 6th day of May, 1861, adopted what is known
11 as the act of secession, by which it attempted to dissolve its relations with the Government of the United States. After the 6th day of May, 1861, the general government was in the attitude of waging war against the State to coerce it to remain in the Union, and the State was in the attitude of armed resistance. In the case of Furman v. Nicholds the court held that the circulating notes of the bank, issued prior to this attempted disruption and the inauguration of hostilities between the State and the general government, was within the terms of that decision; but the court expressly withheld any opinion as to such notes as were put in circulation by the bank after that date. The defendant, Clark, as tax collector of Madison County, demanded of Keith the State tax assessed against him for 1874, and Keith tendered in payment two notes of the

Bank of Tennessee, each of the denomination of twenty dollars,
12 which were issued and put into circulation subsequent to the 6th of May, 1861. These notes constitute a part of what is known in the judicial history of the State as the Torbett issue of the Bank of Tennessee. Clark refused to accept said notes in payment of the tax, and thereupon Keith protested and paid the same in lawful money of the United States. Keith then, within thirty days thereafter, instituted this suit before a justice of the peace, under the act of the general assembly approved March 21st, 1873, entitled "An act to facilitate the collection of revenue," to recover the money so paid. The case was appealed to the law side of the common law and chancery court of said county, where the case was tried before a jury. The court charged the jury in substance that if the notes tendered by Keith in payment of his taxes were issued after the 6th day of May, 1861, and while the State was in hostility to the Govern-
13 ment of the United States, then they were illegal and void as against public policy, and not receivable in payment of taxes or other moneys due the State. A verdict for the defendant resulted and the case was appealed to this court, and without delivering an opinion this court affirmed the judgment. A Federal question being suggested the case was then removed by writ of error to the Supreme Court of the United States, where the judgment of this court was reversed and the cause remanded. This court then remanded the case to the law side of said common law and chancery court, where the case was again tried before a jury, and upon a special finding of the jury a judgment was rendered against the defendant.

From this judgment the defendant has appealed to this court. As the jury did not bring in a general verdict on the issues joined in the
14 pleadings, it is unnecessary to consider the correctness of the charge of the learned judge who presided at the trial, and neither is it material to consider further than is herein noticed the correctness of the many rulings made by him on the pleadings.

Among other things the court sustained a demurrer to a plea of the statute of limitations, and we think correctly. This court has repeatedly held that statutes of limitation do not apply to such bills.

It is so held at the present term of the court in the case of Marr v. The Bank of West Tennessee.

The court overruled a motion to dismiss for want of jurisdiction, and sustained a demurrer to a plea to the jurisdiction. To this we think no exception can be taken.

This suit falls within the class of actions provided for in the act approved March 2nd, 1873. (Tennessee v. Sneed, 6 Otto, 69.)

15 If the notes were not issued in the aid of the rebellion it is manifest that it was the duty of the defendant, as tax collector, to receive the bills tendered by plaintiff in payment of his taxes. (Furman v. Nicholds, 8 Wall., 44.) Any law directing him to do otherwise impairs the obligation of the contract of the State, as expressed in the 12th section of the bank charter, and is therefore unconstitutional. It has been insisted with much earnestness that the court erred in directing, over the objections of the defendant, the jury to bring in a special verdict or finding of facts in the event they could not agree upon a general verdict. We see no objection to this practice.

It has been frequently followed in the courts of this State, and is not

without precedent or authority. (Tidd's practice, page 897.) The findings of fact by the jury, as recorded in the special verdict,
16 is in substance that the bills of the bank tendered by plaintiff to defendant in payment of his taxes were regularly issued by the proper officers of the bank and put in circulation; that defendant, as collector, refused to accept the same, and that plaintiff protested against such refusal and thereupon paid his taxes in the lawful money of the United States; that he instituted this suit to recover the money so paid within thirty days thereafter; that there was no evidence as to what contract or consideration these identical bills were issued or paid by the bank; that the plaintiff purchased the bills in open market without knowledge; that the same were issued in aid of the rebellion, and that the Torbett issue of the bank was received and paid in the ordinary course of business by the bank and its branches.

17 As to whether any contract, arrangement, or agreement was entered into between the governor of the State and the military board, or either of them, on the one part, and the Bank of Tennessee, in its corporate capacity, on the other that the "Torbett issue" of the bank should be issued and put in circulation in aid of the rebellion against the Government of the United States; and, if so, whether it was actually issued and put out by the bank for that purpose. The jury failed to agree, and announced their disagreement in the special verdict. In considering the correctness of the judgment rendered on this verdict, the court must necessarily assume as a fact, without, however, deciding the question, that the "Torbett issue," of which the two bills involved in this suit are
18 a part, were, under a contract or agreement between the State and the bank, actually issued and put in circulation by the bank in aid of the rebellion. If this fact, taken in connection with the special findings of the jury, is immaterial, then the judgment should stand; otherwise this court will award a new trial. It is settled by the Supreme Court of the United States in this case that the entity of the State of Tennessee was not during the war, or at any other time, destroyed or in any way subverted.

Whether peacefully occupying her place in the family of States or in open rebellion against the Government of the United States her identity has been the same.

Whatever difference of opinion may have personally existed, it is now authoritatively settled by repeated adjudications of the Supreme
19 Court of the United States that the States constituting what is known as the "Southern Confederacy" had no legal or constitutional right to withdraw from the "Federal Union," and the result of the war proved that they unable by force of arms to disrupt their relations with the general government. There is no such thing known to our system as the destructibility of a State. Justice Miller, in the opinion delivered by the Supreme Court of the United States, in this case, says, "The political society which in 1796 became a State of the Union by the name of the State of Tennessee is the same which is now represented as one of the United States in the Congress of the United States. Not only is it the same body politic now, but it has always been the same.

There has been perpetual succession and perpetual identity. There
20 has from that time always been a State of Tennessee and the same

State of Tennessee. Its executive, its legislative, its judicial departments have continued without interruption and in regular order. It has changed, modified, and reconstructed its organic law or State constitution more than once. It has done this before the rebellion, during the rebellion, and since the rebellion, and it was always done by the collective authority and in the name of the same body of people, constituting the political society known as the State of Tennessee.

The logical deduction from this premise is that the legality of an act or contract of the State of Tennessee is not to be determined by its date or the period in the existence of the State when it was made or done, but on the quality of the act or contract. It was unlawful for the State of
21 Tennessee to engage in war against the Government of the United States, and whatever she did in carrying on or promoting the war or in furtherance of her hostile aims and purposes was and is, in a legal sense, void. On the other hand, all the legislation of the State, the judgment of its courts, and the acts of its executive, in short everthing done by any of the departments of the State government in violation of the Constitution of the United States or in aid of the rebellion is just as legal and just as much under constitutional protection during the war as at any other period in the history of the State. It logically follows, and the Supreme Court of the United States so decided, that it is just as obligatory on the State to receive in payment of taxes or other moneys due the State the circulating notes of the Bank of Tennessee issued after May 6th, 1861, as those issued prior thereto, provided the same were not issued in
22 support of the rebellion.

It follows then that the whole question is resolved into one of fact, to be determined by a jury according to the ordinary rules of evidence. The law presumes that the Bank of Tennessee put into circulation the "Torbett issue" in the ordinary course of its business for lawful purposes.

The law will not presume the illegality of a transaction, but the illegality must be made to appear by proof.

The direct questions to be resolved by the jury in this case is were the two bills tendered by the plaintiff to the defendant in payment of his taxes issued by the Bank of Tennessee in aid of the rebellion? This may be shown by proof that the identical bills were issued in aid of the rebellion, or that the class of notes to which they belong were issued and
23 circulated in aid of the rebellion. In either case the burthen of proof is on the defendant.

It would not be sufficient to show that the issues of the bank in circulation on the 6th day of May, 1861, were exhausted in the purchase of "Tennessee war bonds," and that thereby it became necessary for the bank to put in circulation the "Torbett issue" in order to properly carry on its business, for the necessity of doing an act altogether legal may grow out of an act done by the same person which is altogether illegal. On the other hand, we do not think it incumbent on the defendant to show by proof that the two bills tendered to him by the plaintiff was actually issued by the bank in aid of the rebellion under a contract or agreement, either expressed or implied, with the State.

Had the bank issued its notes and put them in circulation in aid
24 of the rebellion without the knowledge, or consent, or procurement

of the State, such a transaction would be just as obnoxious to public policy as if they had been issued under an express contract with the State. Suppose they had been issued and delivered by the bank, either voluntarily or for a consideration, to the Confederate Government to enable it more effectually to prosecute the war, would not such transaction have been as flagrantly illegal as to have issued them to the State for the same purpose under an express contract? We have already announced that because of the disagreement of the jury we are to assume, for the purpose of this opinion, that the "Torbett issue," of which the two bills in question constitute a part, was issued and put in circulation in aid of the rebellion.

As the jury failed to agree upon the exact question upon which the case must be determined, a reversal will necessarily follow, unless there
25 is something in the special findings which takes the case without the general rule. The bank and the State are entirely different entities.

While the State owned all the stock in the bank, appointed its officers, received the benefit of the profits it made, and dictated in its management, yet it was merely a private corporation, and it is to be held and treated accordingly.

This was expressly determined by this court in the case of Watson vs. The Bank. In considering the legality or validity of an act or contract of the bank, we are to judge of it precisely as we would the act or contract of a private individual. That public policy which repels from the courts parties who seek the enforcement of contracts prohibited by law or founded in immorality, is only intended for the guilty, and by no means embraces within its reason or operations innocent persons who are interested
26 in such contracts. The facts set out in the special verdict of the jury conclusively show the plaintiff is an innocent holder, who purchased these notes in open market, without knowledge on his part that they were issued in aid of the rebellion, and that, too, after the "Torbett issue," of which they are a part, was placed in circulation, and again received and paid out by the bank and its branches in due course of business.

It necessarily follows that the bank could not resist the payment of these bills in the hands of the plaintiff, and that he can enforce their payment out of its assets.

This is in harmony with the conclusion of this court in the case of Watson v. The Bank, and the doctrine has been fully recognized by the Supreme Court of the United States, Hanauer v. Doan, 12 Wall., 342, Hanauer v. Woodruff, 15 Wall., 349.

27 Does the same rule apply to the State? It is declared in the 14th amendment of the Constitution of the United States "That neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slaves; but all such debts, obligations, and claims shall be held illegal and void."

It will be observed that corporations and individuals are not within the inhibition of this clause of the Constitution. In determining whether a corporation or private person is liable on a contract made in aid of the rebellion we must look to the requirements of public policy and be gov-

erned by the established rules of the common law. In determining whether we will give effect to the contract of a State made in aid of the rebellion, we must look beyond the ordinary rules of law to the provisions
28 of the Constitution of the United States declaring such contracts void. In this clause we find no exceptions. The inhibition is direct, positive, and without reservation as to innocent holders. A bond of the State of Tennessee, made and executed in the usual way, if issued in aid of the rebellion, would be just as obnoxious to this clause of the Constitution in the hands of a holder, however innocent, as a bond reciting the facts on its face that it was made and executed to enable the State to carry on war against the United States. Its language is most comprehensive and was intended to absolutely prohibit, in any event, the States from carrying out, or in an any way paying, any such debt, or executing any such contract. The 12th section of the bank's charter, as already stated, is a contract of the State within the protection of the Constitution of the United States. It is in the nature of a continuing guaranty.
29 It took effect the moment each circulating note was issued and delivered by the bank to the holder thereof. Each and every bill of the bank issued for lawful purposes, and in due course of business, is embraced in this guaranty; and the obligation will rest upon the State to receive the same in payment of taxes or other moneys due it. Should it appear, however, on another trial, that the two bills of the bank tendered by plaintiff to defendant in payment of his taxes were issued and put in circulation in aid of the rebellion, then the 12th section of the bank's charter as to these bills would not be within the protection of the Constitution of the United States, and the contract of the State to receive these particular bills in payment of its taxes or other moneys due it would be to that extent void, under the 14th amendment. It results from the conclusions we have reached that the judgment must be
30 reversed, and the cause remanded for a new trial.

PATTERSON.

The question whether the particular notes in controversy were issued and put in circulation in aid of the rebellion was material. If this fact had been found by the jury it would not have been met by the finding that the plaintiff bought the notes in open market without notice. If the notes were void upon grounds of public policy, because made and put in circulation in aid of the rebellion, then they would be void in whomsoever hands they might come. The jury failed to agree as to whether the "Torbett issue," of which the notes in controversy were a part, were made and issued for an illegal purpose. They do find that there was no proof directly in reference to these particular notes. It is clear that the
31 question was as to these particular notes, and a finding of illegality that did not include these particular notes would be bad.

But I do not think it would be necessary to show the illegality by proof, and a finding pointing out these particular notes specifically. A finding that the whole issue was void, supported by sufficient proof, would include these particular notes, and would not be met by a finding that there was no proof specifically pointing out these notes. If there was no evidence upon which the jury could have found the whole "Torbett issue" void, then there would be no ground for reversal.

Whatever may be said upon the effect or sufficiency of the proof on this subject, I cannot say that there was no proof in the consideration of the jury, whatever this or any other court may have decided upon sim-
32 ilar evidence, the party having the right to trial by jury.

McFARLAND.

THE STATE OF TENNESSEE:

I, John H. Freeman, clerk of the supreme court of said State, for the western division thereof, at Jackson, do hereby certify that the foregoing is a full, true, and perfect copy of the judgment, as well as of the opinion accompanying the same, pronounced by said court at its April term, 1880, in the case of E. A. Clark, revenue collector, &c., against John Y. Keith, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of the court, at office in the city of Jackson, this 28th day of June, A. D. 1880, and of the Independence of the United States the year.

[SEAL.] JOHN H. FREEMAN, *Clerk*,
By D. P. DAVIS, *D. C.*

33 THE STATE OF TENNESSEE:

Pleas before the law side of the common law and chancery court of the county of Madison, begun and held in the court-house, in the city of Jackson, on the 2nd Monday, it being the 14th day of February, A. D. 1881, and 105th year of American Independence. Present, the Hon. H. W. McCorry, judge of said court.

MONDAY, *March 14th*, 1881.

Court met pursuant to adjournment.

Present, the Hon. L. B. Horrigan, judge of the criminal court of Shelby County, Tenn., presiding by interchange with the Hon. H. W. McCorry, judge, &c., of this court.

Order to refile demurrer, plea, &c.—Empanneling jury, &c.

34 JOHN Y. KEITH, *vs.* E. A. CLARK, TAX COLLECTOR. } # 277 jury docket.

The parties appear by their attorneys, and thereupon the defendant asked and obtained leave to refile the demurrer, plea, and motion to dismiss this cause for want of jurisdiction, together with the other pleas filed at and before the last trial of this cause.

The court, upon consideration, overrules the defendant's exceptions to the jurisdiction.

The court also sustains the demurrer, and strikes out pleas of defendant as at the last trial of this cause, which ruling is of record, to which the defendant excepted.

The defendant also requested the court to instruct the jury upon
35 the trial in accordance with the request by defendant upon the last trial.

And thereupon came a jury of good and lawful men, come, to wit,

J. L. Phillips, W. F. Henry, S. S. Johnson, W. C. McCaslin, J. V. Fortune, J. S. Pearson, W. R. Williamson, M. T. Hardin, W. M. Tidwell, W. C. Stovall, J. P. Stribling, and P. D. W. Conger, who, being elected, empanneled, and sworn well and truly to try the matters in dispute between the plaintiff and defendant to this cause and a true verdict render according to the law and the evidence, and who proceed to consider the same, but because there is not time to-day to complete said trial, the jury aforesaid is respited until to-morrow morning, 9 o'clock, to which hour the court adjourns.

L. B. HORRIGAN,
Judge Criminal Court of Shelby County.

36 TUESDAY, *March 15th*, 1881.

JOHN Y. KEITH
vs.
E. A. CLARK, TAX COLLECTOR. } # 277, jury docket.

The parties appear, by their attorneys, and thereupon the jury heretofore empannelled herein come into court, and the trial of this cause is resumed; but, because there is not time to-day to complete said trial, the jury is again respited until to-morrow morning, 9 o'clock, to which hour the court adjourns.

L. B. HORRIGAN,
Judge Criminal Court, Shelby County.

Verdict and special finding.

WEDNESDAY, *March* 16, 1881.

37 JOHN Y. KEITH
vs.
E. A. CLARK, TAX COLLECTOR. } # 277, jury docket.

The parties appear, by their attorneys, and the jury heretofore empannelled and sworn herein, who, having arrived at their verdict, upon their oath do say that they find the matter in controversy in favor of the plaintiff, and that plaintiff is entitled to recover from defendant the sum of forty dollars.

And, in response to the following questions, they thereupon made the following special findings, to wit:

To the question, "Does the proof show that the Bank of Tennessee did a regular banking business after the 6th of May, 1861; that is, was any part of its business in receiving deposits, paying checks, discounting bills & notes, &c.," they find in the affirmative.

38 And in response to the question, "Does the proof show whether the two notes in issue were issued and paid out in aid of the rebellion or in the ordinary course of banking," they find in the negative.

It is, therefore, considered by the court that said amount of forty dollars was wrongfully collected of plaintiff by defendant, and ought to be refunded, and that plaintiff, therefore, recover from defendant the sum of forty dollars, together with the costs of this cause, and that a certified copy of this judgment be furnished to plaintiff to be exhibited to the comptroller.

The defendant moves the court for a new trial herein, which the court overrules. He then moves in arrest of this judgment, which this court also overrules; to all of which the defendant excepts, and tenders to the
39 court his bill of exceptions, which he prays may be signed, sealed, and made a part of the record in this cause; which is accordingly done.

The defendant then prays an appeal in the nature of a writ of error to the supreme court of Tennessee, to be held at Jackson on the 1st Monday in April, 1881, which is granted.

And thereupon the court adjourns until to-morrow morning, 10 o'clock.

L. B. HORRIGAN, *Judge.*

Bill of exceptions.—Filed March 16th, 1881.

JOHN Y. KEITH
vs.
E. A. CLARK, TAX COLLECTOR OF MADISON County, Tenn.

Upon the trial of this cause the following proceedings were had:
40 The warrant and pleas were read, and are made part of this record.

The statement of E. A. Clark was then read by consent as his deposition, which is as follows:

E. A. Clark testified that he was tax-collector for the county of Madison for the collection of the State and county taxes for the years 1874 and 1875; that he was in the habit, as required by law, of making his returns on the first of each month for the collections of the preceding month, and presumes he did so in this case. There was only one exception to this mode of making his returns during his term of office, and that was on one occasion he was three months without making a return.

That *is* such tax-collector he executed and delivered to the plaintiff Keith the paper then shown him, signed by himself as tax-col-
41 lector, acknowledging the receipt of his taxes for the year 1874, and Keith's protest of the same.

Said paper was then read to the jury, and is in the words and figures following:

Receipt.

Received, Jackson, Tenn., July 20th, 1875, of John Y. Keith, forty & $\frac{36}{100}$ dollars and one & $\frac{75}{100}$ dollars interest thereon, being the amount his State taxes for the 15th dist. of Madison County for the year 1874. (Forty dollars of said amount was tendered me in Torbett issue of Tennessee money, which, being refused, was paid in U. S. currency under protest.)

Tax, 40.36; int., 1.74—$42.10.

E. A. CLARK,
State & County Rev. Collector for Madison County.

(Endorsed:) Twenty dollar bill. Letter A. No. 1369. Dated
42 June 1st, 1854. Twenty dollar bill. Letter D. No. 2845. Dated June 1st, 1861. E. A. C., Jan'y 6, '80.

A. W. Campbell's evidence, by consent, was read from the same record, which was as follows, and is made a part of this record: A.W. Campbell testified that he was well acquainted with G.C. Torbett; had practiced law with him at the same bar; had frequently seen him write; had correspondence of a business character with him before and since the war; that he knows the handwriting of the said Torbett, and from his knowledge of his writing he believes his signature to the two notes in question are genuine.

That he had since the war seen a number of $1,000.00 and $500.00 notes of the Bank of Tennessee, which were issued upon what purported to be post-note plates, but he had never seen one that was a post-
43 note bill by its terms. All of such notes that he had ever seen were made payable on demand. He had seen these notes signed Torbett, pres., and Fisher, cashier. Witness here produced one of said notes, which is in the words and figures following:

Post note.

D A A D

No. 162.] [No. 162.

Capital $5,000,000.

(On left margin:) 500.
(On right margin:) 500.

On demand, after date, The Bank of Tennessee will pay five hundred dollars to or order, at Nashville, Sept. 1, 1861.
JNO. A. FISHER, *Cash'r.* [Post note.] G. C. TORBETT, *Pres.*

A. H. Rhodes' evidence was read from the record of supreme court by consent, and is as follows, and is made a part of this record:

44 N. Rhodes testified that he was cashier of the branch Bank of Tennessee at Somerville, Tennessee, from the summer of 1856 to the last of June, 1861. From early in May, 1861, G. C. Torbett was the president of the mother Bank of Tennessee, at Nashville, and Jno. Fisher was the cashier of the same for some year or two before May, 1861, and continued to be such cashier until about the close of the late war.

John Y. Keith's evidence was read from the supreme court record by consent, and is as follows, and is made a part of this record:

John Y. Keith testified that the two twenty-dollar Bank of Tennessee notes shown to him are the same twenty-dollar notes which he tendered to E. A. Clark, tax collector, in part payment of the taxes due by him
45 to the State for the year 1874.

Cannot remember how long he had held said notes before he made said tender, nor what he paid for them; that when he bought said notes he had no notice or knowledge that said notes were issued in aid of the rebellion or for any illegal purpose; that the tender was made to said Clark on or about the twentieth of July, 1875, and upon the refusal of said

Clark to accept the same he paid his taxes in legal-tender Treasury notes of the United States, and brought this suit against said Clark within two or three days afterwards.

On cross-examination he stated that he was in the habit of buying this class of bank notes and other uncurrent money when offered.

46 Does not remember when he first bought "new issue" notes of the Bank of Tennessee.

In 1865 he bought Bank of Tennessee notes without discrimination between "new" and "old" issues of the bank. After that time a distinction was made between the "new" and "old" issues.

He had never purchased any at one cent on the dollar; that he had paid as low as five cents on the dollar for some of the change notes of the bank, and that he had paid as high as forty-five cents on the dollar for "new issue" before the commencement of this suit. He could not say how much he had bought and sold of the "new issue" at different dates. He did not know that there had been any constitutional action upon said notes until to-day, but did know that there was legislation against them.

47 That he had bought and sold for himself and others as much as one hundred thousand dollars uncurrent money from time to time; had been dealing in uncurrent money since 1857.

EXHIBITS A & B.

The two twenty-dollar bills sued on were then read, and by consent the originals are sent to the supreme court and made parts of the record marked A & B.

NASHVILLE, *June* 1, 1854.

20.] [20.

1369. A. [No. 1369. A.

The Bank of Tennessee will pay twenty dollars to bearer on demand at their bank in Athens.

JNO. A. FISHER, *Cash'r.* G. C. TORBETT, *Pres.*

20.] [Twenty.

48 NASHVILLE, *June* 1, 1861.

20.] [20.

2845. C.] A, B, C. [No. 2845. C.

The Bank of Tennessee will pay twenty dollars to bearer on demand at their bank in .

(Across the face:) Twenty.

20.] [Twenty.

JNO. A. FISHER, *Cash'r.* G. C. TORBETT, *Pres.*

The receipt of E. A. Clark to Jno. Y. Keith being formerly proven was read with endorsements thereon, the same being also proven, and is marked D, and made a part of the bill of exceptions.

Exhibit D.

E. A. Clark's receipt.

49 Received, Jackson, Tenn., July 20th, 1875, of John Y. Keith forty and $\frac{36}{100}$ dollars and one & $\frac{75}{100}$ dollars interest thereon, being the amount his State taxes for the 15th dist. of Madison County for the year 1874. Forty dollars of said amount was tendered me in Torbett issue of Tennessee money, which being refused was paid in U. S. currency under protest.

Tax, 40.36; int., 1.74.—$42.10.

E. A. CLARK,
State & County Rec. Collector for Madison County.

(Endorsed:) Twenty dollar bill. Letter A. No. 1369. Dated June 1, 1854. Twenty dollar bill. Letter D. No. 2845. Dated June 1st, 1861. E. A. C. Jan'y 6, '80.

This was all the testimony of the plaintiff.

50 The defendant then read the deposition of D. Weaver, which is as follows:

D. Weaver's deposition.—Filed Jan'y 24, 1880.

Ques. 1st. State your age and residence before, during, and since the late war.

Ans. I am in my sixty-fifth year; lived within 5½ miles of Nashville before, during, and since the late war.

Ques. 2. Were you engaged in the banking business before and at the outbreak of said war in Nashville, Davidson County, Tennessee? If so, with what bank or banks were you connected?

Ans. 2. I was; and as cashier of the Planter's Bank of Tennessee.

51 Inter. 3rd. How long have you been a citizen of Tennessee, and of Davidson County in said State, and how long engaged in the banking business?

Ans. 3rd. I have been a citizen of Tennessee fifty-five years, and of Davidson County forty-three years, and engaged in the banking business for the last twenty-six years.

Inter. 4th. What were the principal banks in Tennessee for several years before and at the commencement of the late war?

Ans. 4th. The Bank of Tennessee, Planters' Bank of Tennessee, and the Union Bank of Tennessee.

Inter. 5th. What relation did the "Bank of Tennessee" sustain to the State of Tennessee and the government thereof?

52 Ans. 5th. The Bank of Tennessee was fiscal agent of the State.

Inter. 6th. What business relations, if any, did your bank or banks have with the Bank of Tennessee in regard to receiving each other's checks or checks drawn on each and settling balances?

Ans. 6th. By an arrangement between The Bank of Tennessee, The Planter's Bank, and The Union Bank, each bank in the ordinary daily transactions of its business were to receive the notes of and checks on each

other and return the same the next morning for settlement, the debtor bank paying the balance at the time in cash or on demand at any time thereafter.

Inter. 7th. Did your relations with The Bank of Tennessee, and
53 your conferences and intercourse with its managers along in March, April, and May, 1861, and for several months before, and for several months thereafter, enable you to understand in what interest, and for what end its resources were being used?

Ans. 7th. They did not. I only knew as a fact that the cashier, John A. Fisher, was in full sympathy with the governor, Isham G. Harris, in his secession movements, and it was generally reported and believed at the time that the other officers of the bank were also in full sympathy with the governor.

Inter. 8th. State what was the attitude of the governing authorities of the State of Tennessee from the beginning of the year 1861 till war
54 was flagrant, and from the actual commencement of the war until the occupation of Nashville, Tennessee, by the Federal forces towards the Federal Union.

Ans. 9th. Hostility towards the Federal authorities.

Inter. 8th. State whether or not a military and financial board was created in or about the last of April, 1861, in Tennessee, under its then governing powers, and if so, what was its purpose?

Ans. 9th. There was. Its purpose was to raise means, organize, arm, and equip a provisional force.

Inter. 10th. If it was to raise the means to organize and equip an armed force, for what was this armed force designed?

Ans. 10th. To resist the Federal authorities.

55 Inter. 11th. Through what channel did this "board" raise mainly the means they demanded, or received?

Ans. 11th. The Bank of Tennessee.

Inter. 12th. Were the directors and managers of the Bank of Tennessee in full sympathy with the purposes of the then governor and the said military and financial board in their efforts to raise, organize, and equip this armed force to be used to aid the South in her opposition to the Federal Government and Union, and to support the State of Tennessee in her movement towards secession?

Ans. 12th. See answer to question 7th.

Inter. 13th. When the military and financial board began to check on the Bank of Tennessee for money to carry out its military pur-
56 poses in aid of the South, and in hostility to the Federal Government, did it have any money to its credit in said bank?

Ans. 13th. It did not.

Inter. 14th. State if, along in May or June, and all along through the year 1861, the checks of said military and financial board were deposited with the Union and the Planters' Banks.

Ans. 14th. They were.

Inter. 15th. State if, in May or June of the years above stated, the Bank of Tennessee refused to settle the balances in favor of the Union and Planters' banks according to the custom and business usages of the banks; and, if so, what reason or reasons did the Bank of Tennessee give for its refusal?

57 Ans. 15th. The Bank of Tennessee did refuse to settle balances in cash, and gave as a reason that the military and financial board, by its overdrafts on the bank, were absorbing all the currency the bank had.

Inter. 16. After this refusal to settle balances, did the Union and Planters' banks refuse to take checks drawn on the "Bank of Tennessee" by said military and financial board; if not, why not? State fully.

Ans. 16th. They did not, and for the reason that Governor Harris and General W. A. Quarles, supervisor of banks, had given the banks to understand clearly that they would not be allowed to do anything to embarrass the Southern cause.

58 Inter. 17th. What was the balance due the Union and Planters' banks by the Bank of Tennessee June 1st, 1861, and how was the same paid off? Did any balance accrue against the Bank of Tennessee after June 1st, 1861; if so, how was it paid off?

Ans. 17th. The balance due the Planters' Bank from the Bank of Tennessee in June, 1861, was about five hundred thousand dollars ($500,000), and was paid by the Bank of Tennessee in the eight per cent. war bonds; and further large balance did ac'rue against the Bank of Tennessee after June 1st, 1861, and was paid mainly in Confederate Treasury notes.

(Answer and question ruled out. Excepted to by defendant.)

Inter. 18th. State under what and whose control, virtually and practically, were the Bank of Tennessee and the Union and Planters'
59 Banks after April 26th, 1861, and in what interest and for what purpose were they used and managed?

Ans. 18th. They were virtually under the control of Isham G. Harris, governor of the State, and were to be managed and used in meeting the financial necessities of the State in organizing, arming, and equip'ing the provisional forces.

(Answer and question to which it responds rule' out by th e court. Excepted to by defendant.)

Inter. 19th. How did Isham G. Harris, the governor of the State of Tennessee, regard the Bank of Tennessee, and the Union and Planters' banks and what was his policy and purpose with respect to their use and management?

60 Ans. 19th. As integral parts of the State, and to be managed and used in the interest of the Southern Confederacy.

Inter. 20th. Did said Harris, in the then state of public excitement and the attidude of the State, have the power to enforce a complyance with his policy and purpose in regard to the management of said banks?

Ans. 20th. He had ample power.

Inter. 21st. As a fact was not the demand and command of Governor Harris and the military and financial board this in substance and effect: that said banks were an integral part of Tennessee and the South-
61 ern Confederacy, and that they should be managed in the exclusive interests of the Southern Confederacy and against the United States Government in its efforts to restore and enforce its authority over the Southern States and the State of Tennessee?

Ans. 21st. Yes.

Inter. 22nd. In the then state of affairs could the Bank of Tennessee, if it had so desired, or the Union and Planters' banks have resisted the

demands of the governor and the military board, or would it have been safe for them to have attempted resistance?

Ans. 22nd. They could not, and it would not have been safe to make the attempt.

62 Inter. 23rd. How did said board settle with the Bank of Tennessee?

Ans. 23rd. Mainly in eight per cent. war bonds.

Inter. 24th. Were the so-called war bonds of the State of Tennessee deposited with the Bank of Tennessee saleable in the market for money? How were they used?

Ans. 24th. They were deposited with the Bank of Tennessee. They were not saleable in the market for money. They were used mainly in the Bank of Tennessee to make good the overdrafts of the military and financial board.

Inter. 25th. Did your bank take any of said bonds; if so, why?

63 Ans. 25th. The Planters' Bank took, in all, seven hundred and fifty thousand dollars of these bonds. Five hundred thousand of this amount were taken from the Bank of Tennessee, in June, 1861, in payment of the cash balance then due from the Bank of Tennessee, and subsequent two hundred and fifty thousand more were taken from the military and financial board.

The bonds were taken for the reason that Governor Harris had notified the officers of the bank that the Planters' Bank would be compelled to furnish her part of the funds necessary to organize, arm, and equip the provisional forces.

Inter. 26th. State whether your regular banking business, and that of the Bank of Tennessee, in the way of discounting bills, notes, &c.,

64 increased or diminished after April or May 1st, 1861, up to the capture of Nashville by the Federal forces, and if there was a decrease, how great?

Ans. 26th. There was a large decrease in the legitimate business of the banks, such as new discounts in notes and bills from May, 1861 to Jan'y, 1862.

The decrease in the discounted notes and bills in the Bank of Tennessee was between four and five hundred thousand dollars.

(Answer and question to which it referred ruled out by the court. Excepted to by defendant.

Inter. 27th. State whether or not a great deal of your regular banking business during the year 1861 did not consist in renewing notes and bills previously discounted.

65 Ans. 27th. Yes. After May, 1861, nearly all were renewals on paper previously discounted.

Inter. 28th. If there was a decrease or no increase in regular banking business during the year 1861, or from April, 1861, to the close of the year, was there any necessity, aside from the demands of the then governor and the military and financial board, for an increase in the circulation of the Bank of Tennessee?

Ans. 28th. None whatever.

Inter. 29th. Who were the officers of the Bank of Tennessee in 1861, and from then until the said bank and its assets were moved south from Nashville to avoid capture by the Federal forces?

66 Ans. 29th. Torbett was president; John A. Fisher, cashier; William L. Foster, teller; Cunningham and H. L. Claiborn, clerks; don't now remember any others, if any.

Inter. 30th. Who of said officers are living? Name, if you know or remember, those who are dead.

Ans. 30th. H. L. Claiborn is living; W. L. Foster also; Torbett, Fisher, and Cunningham are dead.

Inter. 31st. If you know, by information received from the officers of the Bank of Tennessee now dead, or otherwise, please state the circulation of the Bank of Tennessee May 1st, 1861, and its circulation Jan. 1st, 1862.

67 Ans. 31st. Several years ago I examined the books of the Bank of Tennessee, in company with H. L. Claiborn, who had kept the general ledger of the bank. Mr. Claiborne then made me up such statements from the books as I needed in preparing a deposition in the case of certain stockholders of the Union and Planters' banks versus the directors of said bank. These statements showed that the aggregate amount of circulating notes of the Bank of Tennessee was in May, 1861, between two millions five hundred thousand & and two millions eight hundred thousand dollars (I have not the statements now before me, and therefore cannot give the exact sum in dollars), and about half of this amount was then in actual circulation, that is, outstanding, and the other half in the
68 vaults of the bank, and that in January, 1862, the circulating notes of the bank had been largely increased by new issues after May, 1861, and that the actual circulation or outstanding notes of the bank was then between three-and-a-half and four million dollars.

(Answer and question to which it responds ruled out by the court. Excepted to by defendant.)

Inter. 32nd. If you know, please state the amount checked for on the Bank of Tennessee by the military and financial board during the year 1861, and the amount checked for in each month of said year.

Ans. 32nd. I cannot now state the exact amount in dollars and cents, as I have not the statements before me referred to in my answer to
69 question 31. But I know it was over four millions of dollars, and think it was about four and a half millions of dollars. Cannot give the amount checked out each month, for the same reason.

Inter. 33. State the connection the principal banks of the State had in promoting exchanges and the general commercial business of the State before the late civil war commenced; and, in this connection, state the effect the wants of business had upon the principal banks of the State in relation to their discounts and circulation. After the war had begun what was the character of the business done by the banks? Was it enlarged or diminished? State fully.

Ans. 33rd. The connection the principal banks had in promoting
70 exchange and the general commercial business of the State before the late war was they discounted commercial paper, such as promissory notes and bills. Domestic bills of exchange thus furnished currency to pay debts, buy up and ship to distant markets the surplus products of the country, and in turn furnish exchange on the different commercial points for settling balances.

The effect the wants of business had on the principal banks of the State

in relation to their discounts and circulation was to decrease the discounts and circulation of the banks.

After the war had begun the principal business of the Planters' Bank was to renew paper previously discounted, and take the best care it could, under the then existing circumstances, of the assets of the bank. I
71 presume the policy of the other two principal banks was the same. The legitimate business of the banks was largely diminished.

Inter. 34th. Did you or not give your deposition in the case of the Holders of the "New Issue" of the Bank of Tennessee and the Depositors vs. The Bank of Tennessee? If so, what became of it? Was it read on the trial of the case? If not, why? State all the facts.

Ans. 34th. I did; don't know became of it. I only know that the then attorney-general called on me one morning before the case came up and informed me that my deposition and that of H. L. Claiborn were both missing.

72 Inter. 35th. Was your deposition taken by a committee of the last legislature of Tennessee? Did such a committee visit you for information as to the purposes which led to the issuance by the Bank of Tennessee of what is known as the "new issue" of that bank? Did they take your deposition? If so, where is it? Who composed the said committee? Who called to see you in the matter? State all the facts.

Ans. It was not. A committee or part of a committee (don't know who the whole committee were) called on me and talked the whole matter over, but did not take my deposition. Don't know why they did not. I only remember Landis, of Bedford, and Wiltze, of Hamilton, that called.

73 Inter. 36th. When was Torbett elected or appointed president of the Bank of Tennessee, and when did he assume the discharge of his duties as such?

Ans. 36th. Torbett was elected president, I think, in May, 1861, and entered immediately on his duties.

Objections following interrogatories.

NASHVILLE, *Jan'y 14th*, 1880.

The foregoing interrogatories were made out and submitted to me by Mr. S. F. Wilson, attorney for the State, to be propounded to Dempsey Weaver. Waiving all questions of notice, I agreed to cross the interrogatories and let Mr. Weaver answer at any time and place; but before the interrogatories were forwarded or crossed, I called Mr. Wilson's
74 attention to the fact that many of the questions were leading and otherwise objectionable, and asked that they be changed so as to be free from legal objections.

This was declined, and I now file the following objections to the questions, and call special attention to the objections before the interrogatories are forwarded, so that counsel may correct them.

Reserving the right to object to the answers to all the questions objected to, I submit the following.

A. S. COLYAR.

1st. Question 7th is objected to because it is leading, counsel for the

State in asking the question fixing the facts in his own language, and asking the witnesses' concurrence.

75 2nd. Question 12th is objected because it is leading, being a detailed statement of important facts, with nothing for the witness to do but concur.

3rd. Question 13th is objected because leading.

4th. Question 14th is objected to as leading.

5th. Question 20th is objected to as leading, and because it is asking the witnesses' opinion.

6th. Question 21st is objected to as being leading, showing upon its face that the witness could not be trusted to state his own rendition of the facts, but is required to affirm what is given him as the "substance and effect" of the proof.

76 7th. Question 22nd is in substance giving an opinion about what could be done, and asking the witness to concur, and is therefore objectionable as being matter of opinion and leading.

8th. Question 28th is leading because irrelevant.

And having filed the foregoing protest and objections, I proceed to file the following—

Cross-interrogatories:

1st. If in answer to the 5th question you undertake to tell the relations the Bank of Tennessee sustained to the State of Tennessee and the government thereof, please then state if its relations are not all fixed

77 by statute, and if you are willing to trust your memory, and rely on it, in preference to the laws of the land as published.

Ans. 1st. I presume the relations of the Bank of Tennessee to the State are fixed by statute; and, if so, would be more reliable than my memory.

2nd. If you undertake to answer question 7th in the affirmative, then answer and say if the officers of the bank and the books of the bank did not know and show much more accurately "in what interest and for what end its resources were being used" than you possibly could?

Ans. 2nd. See my answer to question 7.

78 3rd. If in answering question 11th you connect the Bank of Tennessee with the military board, then please say if the books of the bank do not show more accurately than you can remember the amount which the military board drew out of the bank.

Ans. 3d. The books of the Bank of Tennessee will show more accurately than I can remember the exact amount in dollars and cents which the military and financial board drew out of the bank.

4th. If you answer question 12th in the affirmative, then say whether the officers of the bank were not men of integrity, doing what they

79 did do upon their convictions of what was best for the bank under the circumstances.

Ans. 4th. See my answer to question 7.

5th. If in answering question 15 you speak of the bank giving a reason, please tell who the bank officer was that gave the reason. Give his language, and say if he is living or dead, and if his deposition was not taken and read in the Bank of Tennessee case; that is, was his deposition not taken in another case and then, by consent, read in that case?

Ans. 5th. Jno. A. Fisher, cashier, was the officer, and his language was

that the Bank of Tennessee could not continue to pay cash for
80 balances, and for the reason that the military and financial board were absorbing all the cash the bank had by their overdrafts on the bank. He is dead. If his deposition was ever taken and read in any case I have no knowledge of the fact.

6th. If in answer to question 16 you speak of checks drawn by the military board, please state what you paid for these checks in. Did you not pay out your own notes, that is, notes of the bank in which you were an officer, for the check and war bonds, and did you not, as an officer, take up and receive, without complaint, all the notes you paid out for war bonds or on checks drawn by the military board?

81 Ans. 6th. Checks drawn by the military and financial board on the Bank of Tennessee were deposited in the Planters' Bank by the customers of the bank the same as any other checks or bankable funds, and when the depositor drew checks on his deposit such checks were paid in the then mixed currency of the country, which consisted of all sorts of bank-notes current, including Confederate treasury notes and Planters' Bank notes. The bank paid out, as before stated, a mixed currency for the checks and war bonds. All notes of the Planters' Bank so paid out were taken up and received by me, as the officer of the bank, without complaint.

82 7th. As a bank officer of much experience, please answer and say whether among bankers the purposes for which the notes are issued have anything to do or cut any figure when the time comes for taking up the notes. In other words, would among bankers the fact that notes were paid out illegally relieve the bank from taking them up after they had passed into general circulation and come back to the bank?

Ans. 7th. The fact that notes had been paid out illegally would not, in my opinion, relieve the bank from taking them up after they had passed into general circulation and come back to the bank.

83 8th. If in answering question 18th you speak of Governor Harris, state whether Governor Harris made the Bank of Tennessee do anything, and, if so, what, which it did not want to do or which the officers of that bank did not want to do?

Ans. 8th. I do not know that Governor Harris ever made the officers of the Bank of Tennessee do anything they did not want to do.

9th. If in answer to question 19th you say anything about Governor Harris' policy, then state if he in any way to your knowledge caused the officers of the Bank of Tennessee to do what they did not approve.

Ans. 9th. See my answer to cross-question 8.

84 10th. If in answer to the 20th question you say Governor Harris had the power to enforce his policy, please state if he forced any policy on the Bank of Tennessee contrary to the wishes of the bank officers.

Ans. 10th. See my answer to cross-question 8.

11th. If in answer to question 22nd you say Governor Harris had the power to overcome the Bank of Tennessee, please state if he ever put the officers of the Bank of Tennessee to the test of complying with his policy or resisting.

Ans. 11th. If Governor Harris ever put the officers of the Bank of Tennessee to the test of complying with the policy or resisting, I
85 never heard of it.

12th. Don't you think the books of the Bank of Tennessee show more accurately the increase or decrease of its business than you possibly can from recollection, as in *in* question 26th?

Ans. 12th. Yes.

13th. Don't the books of the bank show accurately what you are asked about in question 31, and the same as to question 32?

Ans. 13th. They should.

14th. Do you know for what purpose the notes involved in this suit were issued?

86 Ans. 14th. They were issued to meet an emergency.

15th. Did not the Bank of Tennessee do a large business in the year 1861, in the way of discounting notes, buying bills, &c.?

Ans. 15th. From Jan'y, 1861, to May she doubtless did, but subsequently there was but little legitimate business for banks to do.

16th. Was not the "new issue" paid out like the old issue; that is, passed to the credit of the teller and paid out just as all other money was?

Ans. 16th. I presume it was.

17th. Don't you know the fact that the bulk of what is known

87 as "new issue" was issued after the military board had ceased operations, and after the Bank of Tennessee had bought and paid for the war bonds; what is your recollection?

Ans. 17th. I do not.

18th. Was anything done after the 6th of May, 1861, by which the relations between the Bank of Tennessee and the State of Tennessee were changed?

Ans. 18th. Nothing that I know of.

D. WEAVER.

The foregoing depositions were taken before me, as stated in the caption, and reduced to writing by the witness in my presence.

88 And I certify that I am not interested in the cause nor kin or counsel to either of the parties.

And that I sealed them up without being out of my possession, or at*ten*'d after they were taken.

Given under my hand and seal this 20th day of Jan'y, A. D. 1880.

[L. S.] ALVA A. KNIGHT,
Notary Public.

JACKSONVILLE, FLORIDA,
January 20th, 1880.

This deposition when taken may be read, subject to all legal objections, in all the "new issue" case suits now pending in the State where I am counsel; that is, the deposition being taken in the case of Keith vs. Clark at Jackson. Copies may be taken to be read in all other new issue cases now pending in the State where I am counsel.

Jan'y 14th, 1880.

A. S. COLYAR.

89 (Questions 17, 31, 32, 34, 35, and answers to the same, were objected to by plaintiff as incompetent and irrelevent, which objection was sustained by the court; to which defendant excepts.)

Governor I. G. Harris' deposition was then read.

Gov. I. G. Harris' deposition.

I. G. HARRIS, witness for the State, aged , being sworn, deposes as follows:

1st question (by counsel for def't). Please state your residence, age, and occupation.

Ans. 1st. Memphis; sixty-one years; lawyer by profession.

90 Ques. 2nd. What was your official position and place of residence in the year 1861, and up to February, 1862?

Ans. 2nd. I was the governor of Tennessee during the time specified, and my official residence was Nashville, Tennessee, where I spent almost my entire time, though my private residence was Memphis, Tennessee.

Ques. 3rd (by defendant). State if during the time and period above mentioned it become your duty to organize troops; and, if so, how many, and for what purpose, and state what money or cash resources the State of Tennessee then had available for present use in her treasury.

91 Ans. 3rd. By referring to the act of May 6th, 1861, it will be seen it was made my duty as governor "to raise, organize, and equip a volunteer force for the defence of the State, to consist of fifty-five thousand volunteers." My recollection is that the State had no cash resources in the treasury available at that time over and above the amount necessary to meet the current ordinary expenses of the State government and the interest falling due upon her debt.

Ques. 4th (by same). How did you obtain the money used in the equipment of these troops? Did you obtain it by the voluntary action

92 of parties or by the exercise of the coercive powers vested in you? State if this force in your hands was or not of such a character as to make resistance on the part of the officers of the Union and Planters' Bank impossible, and would not such resistance on their part have been dangerous to individuals personally and absolute destruction of the assets of those banks.

Ans. 4th. The 9th section of the act of 6th May, 1861, above referred to, authorized the governor to issue and dispose of $5,000,000 of the bonds of the State for the purpose of carrying out the provisions of said act. As necessities for money to organize and equip the force presented themselves,

I issued the bonds, but finding no sale for them in the market I de-

93 termined that the three principal banks in the State, that is, the Bank of Tennessee, the Union Bank, and the Planters' Bank, should take the bonds and furnish the funds necessary. The officers of the Bank of Tennessee were in full sympathy with me, but that bank was unable to meet the financial necessities of the occasion, and they assured me that without the co-operation of the Union and Planters' Banks I would not be able to raise the amount of funds necessary. I had several interviews with the officers of the Union and Planters' Banks, and became satisfied that they were not inclined to co-operate with the Bank of Tennessee in the matter,

but to confine themselves to a strict system of banking, looking

94 alone to the interests and profits of these banks. This I regarded as hostile, and if tolerated possibly fatal to the Confederate cause in Tennessee. In this condition of affairs regarding, as I did, the Bank of Tennessee and the Union and Planters' Banks as not only important but necessary elements of strength to the Confederate cause in the State, I had

several interviews with Orville Ewing, president, and D. Weaver, cashier, of the Planters' Bank, and John Kirkman, president, and James Corry, cashier, of the Union Bank, in which I endeavored to induce them to join and co-operate with the Bank of Tennessee in taking such amount of the war bonds of the State as necessity should require me to sell.

95 I endeavored to satisfy them that it was the duty of these banks to co-operate with the Bank of Tennessee in meeting the financial necessities of the State in the emergency then upon her; being identified with the people and State of Tennessee, they must make common cause and stand or fall with them. These interviews with the officers of these two banks were unsatisfactory to me. They satisfied me that the Union and Planters' Banks were resolved to adhere to a strict system of banking and withhold their aid from the State in her then pressing financial necessity. Finally I called at these two banks for the purpose of representing to their officers the financial

96 necessities then pressing upon the State, and to make them understand that the Union and Planters' Banks would not be permitted to pursue the policy adhered to up to that time. That they would be compelled to co-operate with the Bank of Tennessee in meeting the financial necessities of the State. I am satisfied that I made them clearly understand that if they did not co-operate with the Bank of Tennessee in meeting these financial necessities that I would take the assets of these banks out of their hands and place them in the hands of a receiver who was known to be friendly to the confederate cause. At the end of this interview I was told that I should have an answer that evening or the next morning, and on the next morning I was informed by the

97 officers of both the Union and Planters' Banks that they would take the bonds. My opinion was at that time, and is now, that if no argument more potent than persuasion had been used that neither the Union or Planters' Banks would have invested a dollar in the war bonds of Tennessee. I was determined that the assets of these banks should not be used against Tennessee or the Confederate cause, but to the extent necessary should be used in support of that cause. I would not have hesitated to have ordered the seizure of their assets at any time that I should have become satisfied it was the only means of securing this result. That

98 I possessed the power to have seized and controlled the assets of these banks at that time I have no doubt, and I should most certainly have used all the power I possessed to do so if they had persisted in declining to co-operate with the Bank of Tennessee in meeting the necessities then pressing upon us.

Ques. 5th (by same). You state in the above answer that you were resolved that the assets of the banks should not be used against Tennessee or the Confederate cause, and to the extent necessary should be used in support of that cause, and should not have hesitated to order the seizure of their assets at any time. Please state if you made this resolve known to the Union and Planters' Banks.

99 Ans. 5th. My last visit to these banks referred to above was made for the express purpose of making them understand, and I left them satisfied that I had made them understand, that they would be compelled to co-operate with the Bank of Tennessee in meeting the financial necessities of the State. I was satisfied that this was the only argu-

ment that would be successful, having previously tried all others that I could command.

Ques. 6th (by same). Please state whether G. C. Torbett, president, and John A. Fisher, cashier, on and after 6th of May, 1861, were known and called as Union men or rebels. Were they negative men or did they
100 espouse actively and energetically their side of the civil war?

Ans. 6th. Granville C. Torbett, president, and John A. Fisher, cashier, were not known as Union men after 6th May, 1861. I understood them to be, as I think they were generally regarded by those who knew them, as earnest and zealous in support of the Confederate cause.

Ques. 7th (by same). Did you or not use force or threats towards the Bank of Tennessee or its acting president and officers to get the money used in aid of the rebellion, so called, or did they advance the money voluntarily, knowing the purpose for which it was to be used?

101 Ans. 7th. I had no occasion to use either threats or force with the officers of the Bank of Tennessee, and did not use either. The officers of that bank being as earnest in support of the Confederate cause as I was, they were always ready to do what they could to meet the necessities of the State in support of the cause. They certainly knew the purpose for which the money checked out by the military and financial board was used.

Ques. 8th (by same). Please state, to the best of your remembrance, the amount of the capital of the Bank of Tennessee; also the amount received from the bank under your orders or drafts by the military
102 board or by demands of other Confederate authorities (if any) to aid in arming, paying, equip'ing, and organizing troops or other purposes in aid of the so-called rebellion or late civil war.

Ans. 8th. I cannot state from memory the amount of the capital of the Bank of Tennessee, nor can I state the amount received from the bank upon the checks of the military and financial board; the reports and books of the bank will show, I have no doubt; I know of no money drawn from the bank for the purpose of arming, paying, equip'ing, or organizing troops, or for any other purpose in aid of the so-called rebellion, except the money drawn on the checks of the military and financial board, and this
103 money was in exchange for what was known as war bonds, but I do not remember whether bonds to the full amount were issued and delivered to the bank.

Ques. 9th (by same). Please state whether or not as governor of the State, or as a citizen, you had a knowledge of the management and course of business by the Bank of Tennessee for several years before 1861. Also state whether or not, in the due course of business of banking as practiced by this bank before 1861, there would have been any necessity for the bank to issue the "new issue," or so-called Torbett issue, to meet its usual and ordinary demands, as shown in its past business.

104 Ans. 9th. My duties as governor in respect to the Bank of Tennessee were to nominate a board of directors for the mother bank; when I had done that and they were confirmed, I did not in any manner interfere with the management or business of the bank, and know little if any more about its business than any other intelligent business man. I know of no necessity which would have called forth what is known as the "new issue" or "Torbett issue" if it had not been for the drafts upon the currency of the bank to pay for the war bonds.

Ques. 10th (by same). State whether or not the "new" or "Torbett issue" of the Bank of Tennessee was signed and issued to meet
105 demands on the bank in its ordinary course of business, or to meet demands on the bank by officers and agents of the Confederate and so-called rebel States.

Ans. 10th. I cannot say what prompted the officers of the bank to issue what is known as "new issue" or "Torbett issue." I have no recollection of having been consulted or notified of the intention to issue these notes. My impression is that the first I knew of them they were in circulation. I believed at the time as I believe now, but do not know the fact, that they were issued to supply the place of the currency of the bank, which had been advanced for the war bonds of Tennessee.

Ques. 11th (by the same). State whether or not the so-called
106 "Torbett issue" had been signed and was ready for issue 6th of May, 1861, or had to be signed thereafter to meet the demands of the Confederate military authorities.

Ans. 11th. Not knowing I cannot answer.

Ques. 12th (by same). State whether or not all the old forms or bank bills were hunted up and signed to meet military demands, or did the bank have a surplus of bank bills not signed after meeting your military demands?

Ans. 12th. I do not know.

Ques. 13th (by same). What amount of war State bonds or Con-
107 federate and so-called rebel securities did the Bank of Tennessee, from 1861 to the close of the war, receive from you and the military boards?

Ans. 13th. My memory does not enable me to answer as to the amount of Tennessee war bonds the Bank of Tennessee agreed to take from me as governor, nor do I remember the amount of such bonds that were issued and delivered to the bank. I do not think that I, as governor, or that the military and financial board ever asked the bank to take any other Confederate security. The books of the bank will show, I suppose, the amount of war bonds which the bank received and the amount of currency checked out by the military and financial board. My distinct impression
108 is that the military and financial board had closed its operations and ceased to check on the bank before the date of the Torbett issue.

Cross-examined:

Ques. 1st. Did you in any way intimate or suggest to the officers of the Bank of Tennessee to disregard the provisions of the charter of the bank; and did you not in your message in all you said about the bank keep within the charter; and did not the officers of the bank strictly adhere to the charter as far as you know?

Ans. I did not in any way suggest to the officers of the bank to disregard the charter of the bank. My recollection is that in all my messages which treated of the bank my recommendations were confined
109 within the powers of the bank as regulated by law; certainly such was my intention, but I refer to the messages to speak for themselves. The officers of the bank did not disregard the charter of the bank, so far as I know, in its administration prior to the issuance of what is known as the "new" or "Torbett" issue, and whether that issue was a violation of the charter of the bank or not I shall not undertake to say.

Ques. 2nd. Were you intimately acquainted with the president of the bank, Mr. Torbett?

How * * * you regard him; was he not an efficient and faithful officer, and did you not regard him as a most worthy public officer,
110 and in all his acts, both official and private, conscientious and upright.

Ans. I knew Granville C. Torbett for many years before he become the president of the bank; I always regarded him as a man of strict integrity and excellent business qualifications; in all respects a safe and reliable man.

(Excluded.)

Ques. 3rd. Did not the Bank of Tennessee continune to do a large and regular banking business after the military board ceased its operations in discounting notes, buying bills, selling, and buying exchange, &c.?

Ans. The bank continued its regular business up to the time of
111 the evacuation of Nashville, but, as to the extent of its business, I cannot answer, nor do I remember whether the military and financial board completed its work before the evacuation of Nashville. My recollection is that the bank continued to do some business after leaving Nashville while keeping an office at Chattanooga.

Ques. 4th. Do you know to whom the "new issue" notes or any of them were issued?

Ans. I do not.

And further witness says not.

ISHAM G. HARRIS.

WASHINGTON CITY, WASHINGTON COUNTY.

Subscribed and sworn to before me this 20th day of Jan'y, A. D. 1880.

[L. S.] R. B. NIXON,
Notary Public.

112 We, Jno. H. Savage, att'y of the defendant, and A. S. Colyar, att'y of the plaintiff, in the case stated in the caption, hereby agree that this deposition may be read, subject only to exceptions of competency to the deposition or any part of it; either party at the trial having the right to except, as if exceptions had been filed at the time of taking the depositions. We hereby waive the formal caption and certificate. We agree that this deposition or certified copies may be used in all cases now pending in Tennessee involving the new issue in which we are counsel.

We agree to seal it up and deliver it to John H. Savage to be delivered to the clerk at Jackson, Tennessee.

A. S. COLYAR,
113 *Att'y for Pl'ff.*
JOHN H. SAVAGE,
Att'y for Def't & the State.

Gov. N. S. Brown's deposition was then read.

Deposition of N. S. Brown.

Ques. 1st. Please state if a military and financial board was organized in Tennessee in the early part of 1861 by the appointment of the then

governor, Isham G. Harris; and, if so, were you a member of said board?

Ans. There was a military and financial board created under an act of assembly and filled by Isham G. Harris, then governor of the
114 State. I was appointed one of said board. This was in April, 1861.

Ques. 2nd. Please state the objects and purposes of said board.

Ans. The object was to raise and equip an army and furnish stores and supplies, and to prepare the State for an expected collision with the Government of the United States.

Ques. 3. From what source did said board get the means to carry out its purposes?

Ans. We got our means by checking on the Bank of Tennessee under an assurance of depositing with the bank bonds of the State with
115 interest at 8 per cent., as provided by the statute. We commenced checking before bonds were deposited; but bonds from time to time were deposited. To what extent we checked in the whole, and to what extent bonds were deposited in the whole, I cannot now remember. My supposition was and my recollection is, that from first to last bonds were deposited adequate to the drafts we made from time to time.

Ques. 4th. Please state if the sheet here shown you containing four blank checks with stubs attached are the kind and character of checks used by your board in checking on the Bank of Tennessee; and, if so, will you please file them as Exhibit A to your deposition.

116 Ans. The sheet shown me contains, as I believe, a true copy of the form of checks that we used, and which is hereto annexed, marked Exhibit A, and made a part of this deposition.

Ques. 5th. Please state whether or not the officers and directors of the Bank of Tennessee were in full sympathy with the objects of your board, and promptly and willingly paid the checks of your board drawn on it for the means to carry out its objects.

Ans. I do not know the mind of the directors or their sentiments, but I do know that we had no trouble in getting any of our checks cashed on presentation.

117 I do not know what agreement, if any, was made by the officers of the bank with the governor to cash the checks, but I do know that Mr. Torbett, then president, and Fisher, cashier, were during that period in full sympathy with the South.

(NOTE BY COPYIST.—From word "but" above to "south" marked in bracket, and in margin word "out.")

Ques. 6th. Please give a statement of the condition of affairs in Tennessee from the election of Mr. Lincoln in 1860 until his induction into office as President of the United States, and from that time until the attempted ordinance of secession was passed by the State.

Ans. From the time of the election of Mr. Lincoln there was
118 great excitement in Tennessee, and especially in this community. That excitement continued and rapidly attained a white heat until the ordinance of secession was passed, when the Union element, to which I belonged, ceased any resistance and acquiesced.

It was impossible during that period of excitement to hold a Union meeting, for I tried it and had to yield myself.

Ques. 7th. Please state the position of Governor Isham G. Harris and

the ruling powers in office in Tennessee in reference to the South and the United States, and the attitude the State of Tennessee should assume in the impending conflict.

119 Ans. For some time before the ordinance of secession was passed Governor Harris and all other leading officials of the State were strongly in favor of the South, and as I could infer against the United States; all their influence was exerted in that direction, and, as I said before, public sentiment gradually grew and increased in the same direction until it became a perfect avalanche.

Ques. 8th. In your answer to second interrogatory you state that the object of the military and financial board, of which you were a member, was to raise and equip an army, &c. Do you mean an army to fight against the United States Government and in aid of the Southern or rebellious States in the late war?

120 Ans. My hope when I went into the board was that when the State was put on a war footing together with the other Southern States that an amicable settlement or adjustment would ensue without a resort to arms, for I had not then been able to contemplate a fratricidal or civil war. But subsequent events and the tone of public sentiment have led me to believe that war was the objective point of the whole proceeding.

Ques. 9th. From the time your board was organized and commenced its operations, was there or not any person, or combination of parties or persons, in Tennessee that could resist the purpose of Governor Harris and his advisers, supporters, and sympathizers in making war

121 against the United States Government in resistance to what was then termed its aggressions upon the rights of the South?

Ans. From the time of the organization of our board on down during all the phases of the revolution or rebellion there was no power or combination that could have made any successful resistance against the war spirit that was gotten up. As before stated, I did all I could, and so did others, but in vain. It would have been like trying to ascend the falls of Niagara.

Cross-examined:

Did the military board make any agreement with the officers of

122 *of* the Bank of Tennessee, or make to them any suggestions about putting out or issuing what is known as the "new issue" or "Torbett issue?" Was this money issued by the order, or direction, or agreement of the military board?

Ans. The military board had nothing to do in procuring the financial means to carry on their operations. We made no agreement with the officers of the Bank of Tennessee, nor did we make any suggestions to them about putting out or issuing what is known as the "new issue" or "Torbett issue." That issue was not be the order or the action or agreement of the military board. That board had nothing to do

123 with it. What Governor Harris may have said to the officers of the bank I do not know. He was governor of the State and ex-officio president of our board, but he was seldom with us. So far as I know or believe the "new issue" was resorted to by the bank to meet the current demands upon it of all sorts, including what the military board might and probably would require. I have a well-settled conviction and belief that the new issue was not inspired specially to meet the demands

of the military board, but to meet that and all the other various demands by the numerous other customers of the bank.

(The portion of the above answer purporting to give the well-set-
124 tled conviction and belief of witness as to what inspired the new issue, &c., excepted to by defendant. Exception sustained.)

Re-examination:

Ques. 1. Please state, if you know, for what purpose the so-called "new" or "Torbett issue" was issued.

Ans. I do not know the purpose for which it was made, not having been consulted on the subject and having no knowledge whatever of the councils of the bank.

NEILL S. BROWN.

Sworn to and subscribed before me this February 6th, 1880.

J. B. BROWN, *J. P.*

We agree that the foregoing deposition of Ex-Gov. Neill S.
125 Brown may be read as evidence in the case of Keith vs. Clark, pending at Jackson, Tennessee, and in all other cases in which we are engaged involving the liability of revenue collectors to receive what is called the new issue of the Bank of Tennessee in payment of taxes, caption and certificate and all other formalities required by statute and common law waived.

S. F. WILSON,
For Def't.

Thomas Boyer's deposition was then read.

Thos. Boyer's deposition.

Ques. 1. State your residence now and at the commencement of the late war between the States.

126 Ans. Gallatin now and at the time specified in question.

Ques. 2. What position, if any, did you occupy in the service of the State and the late Southern Confederacy, and by whose appointment and at what time you received your appointment, if one was received by you?

Ans. I was appointed by Governor Isham G. Harris the 6th May, 1861, assistant paymaster-general of the Army of Tennessee, with the rank of lieut. colonel. After the transfer of the Army of Tennessee to the Southern Confederate service I was retained by request of Governor Harris
in the same position, and continued in it until the close of the war.
127 At the said transfer I, of course, was sworn into the Confederate service as the others.

Ques. 3. As said assistant paymaster-general, did you pay off the Tennessee troops for their terms of service for the State? If so, where and from what source did you get the money, and in what kind of money did you pay them?

Ans. I paid them off up to the 1st of August, mostly in Tennessee funds, and obtained my funds from the Bank of Tennessee, and I think the greater portion of the money used was of the issue of the Bank of Tennessee, though I also used the issues of the Union and Planters'

128 banks. After that time I also used a good deal of South Carolina, Georgia, and Virginia bank notes obtained by the Bank of Tennessee by virtue of its banking operations in those States.

Ques. 4th. State whether or not during your payments and disbursements to troops the Bank of Tennessee was short of funds, and whether or not the bank, at your suggestion, adopted any means to get notes for your use; if so, state where, how, and what character of notes you obtained from it.

Ans. I cannot recollect all the facts leading to it, or whether it was at my suggestion, but I needed small notes, and we had a large lot of one and two dollar bills of the Bank of Tennessee printed at New
129 Orleans which were signed by the proper officers of the bank. They were turned over to me, and I used them in paying the troops. I cannot now recollect the amount.

Ques. 5th. What were these troops organized for?

Ans. They were organized to make war against the United States Government.

Ques. 6th. Please state, as near as you can remember, how much money the Bank of Tennessee furnished you to pay said troops.

Ans. I cannot state this. I looked for my old bank account as assistant paymaster some day or so since, but failed to find it;
130 with that I could state. I used, however, a great deal of money, as I had to pay all the Tennessee troops in Middle Tennessee, and also paid some others; I got the money from the Bank of Tennessee.

Question 7th. Were the president and *and* cashier of the Bank of Tennessee and its directors in full sympathy with Governor Harris, and did said bank respond promptly or otherwise to all demands made upon it to aid the war against the United States.

Ans. They were and they did. I was a director in said bank and had been for several years before the war, and I presume I continued
131 as one till the end, as no one was ever appointed in my place after I went into the army.

Ques. 8th. Where did said bank, before the war, have its circulating notes printed and engraved?

Ans. It was done either in New York or Philadelphia, and I think in Philadelphia.

Ques. 9th. Were the plates or dies so used in printing and engraving the circulating notes of said bank returned or brought to Nashville and the bank from Philadelphia or New York before the outbreak of the late war, and before the cessation of intercourse between Nashville and said cities by reason of the late war. Have they ever been returned, or
132 are they still in the hands of parties in said cities?

Ans. I do not know.

Cross-examined:

Ques. The money used by you which came from the Bank of Tennessee for paying off Tennessee troops was provided by, or was a part of the funds checked out by the millitary board, was it not?

Ans. I got my money from Col. Williams, paymaster-general, and of course he got it from the checks of the military board as I suppose.

Re-examined:

133 Ques. 1st. What become of the plates and dies it used in preparing the notes spoken of by you obtained in New Orleans?

Ans. I do not know.

Ques. At what time, or about what time, did you last pay troops in funds furnished by the Bank of Tennessee, or use issues of said bank in paying troops?

Ans. I can't say exactly, for along in the fall, sometime in September, 1861, we commenced getting Confederate money, and after that I did not use much Tennessee money.

Ques. When did Governor Harris turn over the separate Tennessee army to the Confederate service?

134 Ans. July 31st, 1861.

Ques. Did you not use the bills of the Bank of Tennessee in paying troops at Corinth after the battle of Shiloh, and at Knoxville after the battle of Fishing Creek?

Ans. I think I did, but I will not be positive; my impression is that I got money from the hand of the bank at Memphis. I think this was in the summer of 1862.

T. BOYERS.

We agree that the above deposition may be used as evidence. We waive oath, caption, and certificate.

S. F. WILSON, *Att'y.*
A. S. COLGAR, *Att'y.*

135 James Cummins' deposition was then read.

Deposition of Jas. Cummins.

Ques. 1st. You will please state your present residence and occupation.

Ans. Residence, Atlanta, Georgia; occupation, manager Atlanta Public Produce and Cotton Exchange, and commission merchant.

Ques. 2nd. You will please state whether or not you were an officer or agent of the Confederate States in the late civil war and rebellion against the United States; and if so, by whom were you appointed, and when were you appointed, as near as you can remember, and how long did you serve, and in what capacity?

136 Ans. I was appointed an agent of the commissary department of the Confederate States of America, I think May, 1861, by the acting Secretary of War of Confederate States. My recollection is that Mr. Pope Walker was acting in such position, my order coming direct from Col. H. B. Northrup, then commissary-general of the Confederate States, and served in above-named capacity through the war.

Ques. 3rd. You will please state whether or not as such agent and officer of the Confederate States in the late civil war and rebellion against the United States, you had money transactions with the Bank of Tennessee through its acting president, Torbett, and cashier, Fisher, and if so,

137 were they large or small, and for what purpose. State in full the amount and character of your money dealings with this bank, and the time of these dealings, and the kind of money received, and upon what consideration, and how used and applied.

Ans. I had large transactions with the Bank of Tennessee at the beginning of the rebellion, as agent and officer of the commissary department of the Confederate States through its president, Torbett and cashier, Fisher. The money received from the Bank of Tennessee was frequently in Confederate States notes; later on when Confederate States notes became scarce,
Confederate States bonds were sent to me, a number of which I hy-
138 pothecated or sold to the Bank of Tennessee, and other banks in
Nashville, Tennessee. At the evacuation of Nashville I think the Bank of Tennessee held as much as $150,000.00 of Confederate States bonds, upon which they had advanced the currency to me as the agent of the Confederate States government. My recollection is that D. Weaver, cashier of Planters' Bank of Tennessee, also advanced about $75,000.00 upon the hypothecation of Confederate States bonds. The advances made upon the hypothecation was in bank and Confederate notes current at that time. In reference to the advances and money paid by the Bank of Tennessee, a large portion of it was in what is known as the "new issue" or "Torbett issue." All of the funds received was for the
139 use and used for the Confederate States.

Ques. 4th. State whether or not at the time of your money transactions with the Bank of Tennessee, as aforesaid, there were bank bills on the Bank of Tennessee then on hand, signed and ready for issue, to meet your demands, or were bank bills signed or countersigned to enable the bank to meet your demands. Did the bank meet your demands promptly or delay payment; if delay, what caused the delay?

Ans. Frequently I had to wait the signing of bank notes, and later on, when the plates were exhausted, what is known as "post notes" were
issued—$500.00 and $1,000.00 bills—same being issued to meet my
140 demands.

Ques. 5th. Did or not the Bank of Tennessee have on hand bank bills, signed and ready for issue, sufficient to meet your demands? State whether or not bank notes were signed by Torbett and Fisher, president and cashier, for the special purpose of meeting your demands; and, if so, how are such notes now commonly known and called?

Ans. Frequently they did; approaching the evacuation of Nashville Confederate notes and Bank of Tennessee notes become very scarce, and often I had to wait as long as a day for signing of bank notes, by Torbett and
Fisher. The notes so used are generally known and called the
141 "new issue" or "Torbett issue" of the Bank of Tennessee.

Ques. 6th. Did you or not conceal from Mr. Torbett, president, and other officers of the Bank of Tennessee, your character as an officer and agent of the Confederate States.? Did they or not know the purposes for which you were using the money advanced by them?

Ans. The officers of the Bank of Tennessee, and every one connected therewith, and the attorneys in this case knew for a fact that what I was doing was for the Confederate States.

Ques. 7th. Did you use force or threats towards the Bank of Tennessee,
or its officers, to get the money from them, or did they advance it
142 freely and voluntarily, knowing for what purpose you were using it?

Ans. I never used force or threatened force against the Bank of Tennessee, or its officers, in Nashville; they advanced the money freely and voluntarily, knowing for what purpose it was to be used.

Ques. 8th. Did you ever deposit any gold, silver, or other valuable thing other than Confederate State bonds in the Bank of Tennessee, upon which you checked for the money above mentioned, or did the Confederate States have any valuable deposit other than Confederate bonds upon which you could check for the money advanced.

143 Ans. For account of the Confederate States, or me, as an officer and agent thereof, I never deposited, as such officer or agent, any fund with the Bank of Tennessee other than those current at the time of deposit; certainly no gold or silver; I deposited frequently with the Bank of Tennessee funds current at the time, say Southern bank notes, notes of the Union Bank of Tennessee, notes of Planters' Bank of Tennessee.

Ques. 9th. Did or not the Bank of Tennessee advance money to you before Confederate bonds had been prepared and ready for delivery, and upon your promise to make such delivery as soon as prepared?

Ans. I am not sure of this, but think probably they did.

144 Ques. 10th. Were the officers of the Bank of Tennessee at the time of these money transactions known or called Union men or rebels?

Ans. They were at the time considered rebels.

Ques. 11th. You will please state to the best of your remembrance the amount of Confederate State securities or bonds you disposed of to the Bank of Tennessee.

Ans. My remembrance is that the Bank of Tennessee received from me as much as ($750,000.00) seven hundred and fifty thousand dollars in Confederate State bonds.

Cross-examination:

145 Ques. 1st. In whose name was your account kept with the Bank of Tennessee, and who was your clerk or cashier? Did you sign the checks or your book-keeper?

Ans. I. F. Cummings, agent C. S. A. I think I signed the checks myself, and I think J. K. Gilkerson may have signed checks for me.

Ques. 2. Did you sell to the Bank of Tennessee, or only hypothecate the Confederate States bonds? If you sold them, what did you sell them at?

Ans. I sold to the Bank of Tennessee a number of bonds, amount not remembered, just before the evacuation of Nashville I hypothecated

146 with the Bank of Tennessee a large amount of bonds, amount not remembered; which was by the Bank of Tennessee sent to their correspondent at New Orleans, there to be sold for account of the Bank of Tennessee, and proceeds of same to be placed to my credit as the agent of the Confederate States. These bonds on account of the blockade were never accounted for, and after close of the war Mr. Watson, the receiver of the Bank of Tennessee, made a claim against me individually for the balance due the Bank of Tennessee on account of money advanced to me as the agent of the Confederate States.

Ques. 3rd. When you sold or hypothecated Confederate States bonds what was the agreement about paying; that is, was it the agreement

147 simply that the proceeds should be placed to your credit as agent C. S. A., and drawn out by you on your checks as you needed the money, or was there any other agreement; if so, what?

Ans. The bonds thus hypothecated and sold were distinctly understood

to be on account and for the use of the Confederate States and for the payment of supplies purchased for the Confederate States.

Ques. 4th. What I mean is, did you have any agreement with the bank about paying for the bonds except that the proceeds were to be placed to your credit and drawn out as you needed them; if so, what?

148 Ans. Bonds were sold and proceeds placed to my credit; other bonds were sent to New Orleans, upon which I was allowed to draw nearly the full value of them. In the mean time the blockade occurred, and no account of the sale of the bonds *were* received, and after the close of the war Mr. Watson made an account against me. There was no other agreement beyond what has heretofore been stated.

Ques. 5th. At what time did your transactions with the Bank of Tennessee close?

Ans. My accounts virtually ceased at time of evacuation of Nashville, inasmuch as the Bank of Tennessee had no abiding place. I, how-

149 ever, kept an account with the bank in its floating condition until the close of the war, and at the close of the war I held checks of the cashier of the Bank of Tennessee on the Bank of Tennessee for as much as forty thousand dollars ($40,000.00).

Ques. 6th. Examine the two notes now shown you attached to E. A. Clark's receipt—one Letter A, No. 1369, the other Letter C, No. 2845—and say if you ever saw these bills, or if you know when or to whom they were paid out by the bank, each being for $20.

Ans. I don't remember of having ever seen the bills referred to, and certainly do not know to whom they were paid and for what.

150 Re-examination by plaintiff's counsel:

Ques. 1. Can you say that you never saw these bills before, or that they were not paid out to you by the Bank of Tennessee in the transaction of yours with the bank?

Ans. I can't.

JAMES F. CUMMINGS.

Sworn to and subscribed before me this January the 6th, 1880.

[L. S.] G. H. TANNER,
Notary Public & Ex. Off. Justice of the Peace in for 1026 *District.*

We, John H. Savage and A. S. Colyer, att'ys for plaintiff and

151 defendant in the case of Jno. Y. Keith vs. E. A. Clark, tax-collector of the State and county revenue for Madison County, Tennessee, agree to waive caption and certificate by the officer swearing the witness, and that the foregoing deposition of James F. Cummings, sr., or copies thereof properly authenticated, may be read as evidence in the above-named cause and all other causes pending in Tennessee in which we are counsel in which the validity of the new issue is raised, subject only to exceptions for the competency of the evidence.

We now agree to sign this paper, which is done, after which it is enveloped and handed to John H. Savage, to be delivered to the clerk at Jackson.

A. S. COLYAR,
JNO. H. SAVAGE,
Att'y for Clark.

152 Robert Ewing's deposition was then read.

Deposition of R. Ewing.

Ques. 1. State your residence and what position, if any, you occupy?

Ans. I live in the city of Nashville; I am clerk and master of the chancery court, at Nashville, Tennessee.

Ques. 2nd. As such are you also receiver and trustee of the Bank of Tennessee, as successor in the first instance of Samuel Watson, trustee, and N. Baxter, former clerk and master of said court, under and by virtue of the suit originally instituted in said court in 1866 by Sam-
153 uel Watson, trustee of the Bank of Tennessee, and the State of Tennessee vs. The President and Directors of the Bank of Tennessee et als. If so, state when you became clerk and master and such receiver.

Ans. On the 15th Nov., 1876, the term of office of N. Baxter, jr., expired, and, by appointment, I succeeded him. A few days thereafter he resigned as receiver of the Bank of Tennessee, and by the decree accepting his resignation I was appointed by the chancery court to succeed him.

Ques. 3rd. Has there been an order or decree of the court in the case originally instituted in your court by the State of Tennessee, and Samuel Watson, trustee, vs. The Bank of Tennessee et als., directing all
154 creditors, and among them the owners and holders of what is called the "new issue" and post notes, as a class, to file their claims against the bank. And if under said order or decree any of the "new issue" holders filed their notes with you, please state what amount, and in doing so, please file, as an exhibit, a detailed statement from your books.

Ans. Such an order has been made, limiting the time of filing claims against the bank, and from term to term the time for filing has been extended, the last extension being by an agreed decree in the cause at the October term, 1879, extending the time to 1st July, 1881. Notes
155 of the Bank of Tennessee, known as "new issue," to the amount of $92,417.60 have been filed with me by the owners as claims against the bank. I file a copy of my new issue account as requested, but in this account you will notice that notes to the amount of $3,514.58 embraced therein were received by me in settlement of claims due the bank, and do not properly enter into the statement. These latter I regard as a part of the assets of the bank.

Ques. 4th. Please state approximately and as near as you can the amount of the assets of the Bank of Tennessee, good, bad, and indifferent, as shown by the report of your predecessors in the office or position of receiver, if any were made by them, or as shown by your report, if
156 any have been made by you, and the probable amount of available assets of the bank at present.

Ans. Under an order of the chancery court in the cause my predecessor in office, N. Baxter, jr., employed J. C. Rye, a competent bookkeeper (who had before been employed by S. Watson, trustee in the affairs of the bank) to make out a complete report as to the status of the bank. This report was made and filed. I have not myself made any report, but am ready to do so at any time. Baxter's report is now before me. It purports to show the entire amount of original assets which came to the hands of S. Watson, trustee; the aggregate is $13,699,909.57. This is made
157 up of 100 or more different items, the very larger part of which were worthless, as thus:

Confederate bonds	$4,398,181 80
Confederate war tax	475,937
Tennessee war bonds	3,654,000 00
Due by ordinance bureau	27,019
" " military board	126,822
This sum entirely worthless	$8,681,959

Then follows these items:

Bills & notes per schedule	$2,646,538 32
" " " in suit	619,939 56
Due from agents	202,570 46
Treasurer State of Tennessee	169,040 27
Overdrafts by depositors per schedule	548,193 26
Due from banks out of Tennessee	93,339 65
	$4,279,621 52

These may be said in the main to have been transactions in Confederate money, and were almost worthless.

158 The rest is made up of real estate, State bonds, coupons, &c., the real estate being largely overestimated. I cannot without time to make out a report state, with any degree of accuracy, what is the present value of the assets in my hands. They consist *in* State bonds, real estate owned by the bank, mortgages on real estate taken by the trustee, and notes and claims in suit against parties indebted to the bank. If you call upon me to estimate the present value, I would, with great hesitancy, put it at $200,000.

Ques. 5th. Please state what amount of the circulating notes of the Bank of Tennessee have been received and cancelled by the treasurer of the State of Tennessee and your predecessors in the office of re-

159 ceiver and yourself, as shown by the reports of your said predecessors, if any reports were made by them, showing this fact. State what amount has been received by you through the various treasurers of the State, since your resumption of the office of receiver, as cancelled notes of said bank or uncancelled. If their said reports show the amount received in payment of claims of the bank, state it.

Ans. William Morrow, former treasurer of the State, received, cancelled, and turned over to me $95,053.00 of old issue of the Bank of Tennessee. M. T. Polk, present treasurer, received, cancelled, and turned over to me $8,433.00, but this latter I returned to Polk. They

160 received this money from the various collecting officers in the way of taxes. In a deposition given by Mr. Watson (the former trustee) in this cause on the 18th of December, 1872, he stated that the amount cancelled and burned by the State and bank was at that time $3,050,729.00.

Cross-examination:

Ques. In estimating the assets what do you put Tennessee bonds at?

Ans. A good many of the bonds are capitol bonds, and these I estimate at something over the market value, the balance at the market price As

stated I make this estimate with great hesitancy; my efforts at collection of the assests will have to be attended with success to justify it.

R. EWING.

161 We waive the oath and agree that the deposition may be read subject to legal objections.

A. S. COLYAR, *Att'y.*
S. F. WILSON,
Att'y for Def't.

James L. Gaines' deposition was then read without exception.

Agreement as to deposition of James L. Gains, compl't.

The deposition of James L. Gains, compl't, not being on file, it is agreed that said Gains states in his deposition that the State of Tennessee had received into its treasury $2,200,000 of the old issue of the Bank of Tennessee in payment of taxes, and that if any of the "new
162 or Torbett issue" had been received in payment of taxes it was but a small amount received by mistake.

John H. Glass' deposition was then read.

John H. Glass' deposition.

Ques. 1. You will please state whether or not you were at any time an acting officer of the Branch Bank of Tennessee at Trenton; and, if so, state the time and in what capacity did you act. Also state what you may know about the making, signing, and issuing notes of the Bank of Tennessee and its branches known as now called "Torbett" or "new issue" of the bank, and whether such notes were paid out, issued, or used
163 to buy military stores, or to aid the rebellion then existing against the United States in any manner whatever.

Ans. I was in the summer of 1861 assisting the cashier of the branch of the Bank of Tennessee, at Trenton, Tennessee, signed the small bills issued at said branch, and said bills were paid out to purchase munitions of war to aid in carrying on the war then existing between the States. The notes then signed by me are now known as the "new issue."

Ques. 2nd. Did you sign your name to said notes, or did you sign the name of the cashier or president at his instance and request?

164 Ans. I signed my own name to the said notes at the suggestion of the cashier.

Ques. 3rd. Were the notes known as new issue mentioned above paid out over the counter of the bank to military agents of the Confederacy by the officers of the bank, or were they disposed in a different manner from other payments made by the bank with other money?

Ans. These bills were paid out in the general course of business as other bills were to military agents.

Ques. 4th. State some of the military purposes for which said "new issue" was used.

Ans. The said new issue was used amongst other purposes for
165 purchasing guns to arm the Confederate soldiers.

Ques. 5th. State whether or not the legitimate business of the bank for business purposes increased or decreased in 1861 and 1862 after the commencement of the war.

I mean were there more or less loans and discounts of notes than usual after the commencement, not counting issues or funds used for war purposes?

Ans. The legitimate issue or discounts of the bank decreased after the breaking out of the war to a considerable extent.

Further this deponent sayeth not.

JOHN H. GLASS.

166 Cross-examination:

Ques. 1st. Please state if you held any regular office in the branch of the Bank of Tennessee, at Trenton; if so, what office and by whom were you appointed?

Ans. I held no regular office in the bank, but only aided the cashier, who was in poor health.

Ques. 2nd. You speak of signing small bills of the bank; please state the denomination of these bills.

Ans. The bills signed by me were of the denomination of one dollar and under.

Ques. 3rd. Were these bills printed upon the regular plates of
167 the bank or merely change notes, got up by the Trenton branch of the bank for convenience?

Ans. These bills were gotten up on new plates to supply change, and were supplied by the mother bank.

Ques. 4th. You say they were paid out for the purchase of munitions of war; please state if these notes were not used just like any other money or currency of the bank in its ordinary business.

Ans. These bills were used as other currency of the bank in its ordinary business as well as for the aforesaid purpose.

168 Ques. 5th. Please state if the bank was the purchaser of any munitions of war at the time you speak of.

Ans. The money was on deposit in bank, and was paid out over the counter for guns, and the guns left in the bank.

Ques. 6th. Do you mean that the guns were deposited with the bank as a banking institution, or were they only placed in the same house in which the bank was located?

Ans. The guns were left in the banking-house temporarily till sent to the foundry for repairs.

Ques. 7th. Were the guns left there with the bank as a part of the business of the bank, or was it not the case that Major Jno. A. Talia-
169 fero, who was at that time cashier of the branch bank at Trenton, was also the agent of the military authorities in collecting up and purchasing guns for the army?

Ans. The purchase and deposit of the guns were not, as I know, a part of the business of the bank. The cashier, perhaps, did the work as agent of the military authorities.

Ques. 8th. Please state whether all the money paid for these guns was paid in the notes of which you speak of signing, or were they not paid for by any money of any kind or denomination that might have been in the teller's drawer.

Ans. The guns were paid for out of any money in the teller's
170 drawer, without reference to these particular notes.

Ques. 9th. Can you then say that any notes were issued by said branch bank which was put in circulation for the express purpose of purchasing munitions of war?

Ans. I cannot say of my own knowledge that these notes were put in circulation for the purchase of munitions of war.

Ques. 10th. Were you sufficiently acquainted with the business of the bank to know the channels through which the branch banks received their circulation from the mother bank?

Ans. I was not.

171 Ques. 11th. So far as you knew, was not all the Xd notes sent by the mother bank to the branch bank at Trenton placed in the hands of the teller, to be paid out by him in the usual business of the bank, whether the same was what is now usually denominated "old issue," "new issue," or "change notes?"

Ans. They were all paid out alike.

Ques. 12th. You say these change notes were paid out for guns. Now please state if this is not merely a conjecture of yours arising from the fact that the guns were being purchased about the time they were signed and put in circulation; and can you say that of your own knowl-
172 edge that one dollar of the "new issue" or Torbett issue of the Bank of Tennessee was used in the purchase of guns?

Ans. The guns were paid for with such currency as the bank had, and the "new issue" was a part of the currency. I cannot speak more definitely.

Ques. 13th. Please state if the bank at that time was not receiving and paying out notes of the Union Bank and Planters' Bank, and also the notes of the banks of other States.

Ans. It was.

Ques. 14th. Was not all the class of currency mentioned in your last answer received and paid out indiscriminately with the issues of
173 the Bank of Tennessee, both "old issues" and "new issues?"

Ans. It was.

Re-examined:

Ques. Do you know of your own knowledge that there was not an express contract by the bank officers that they were to buy the guns for the Confederate States?

Ans. I do not.

Ques. 2nd. Do you know that the guns were bought by the officers of the bank, and kept in their custody and control at the bank until sent to the foundry?

Ans. Yes; I do.

174 Ques. 3rd. Do you know that either of the officers of the bank buying these guns were officers or agents of the Confederate States except as to this transaction of buying, paying, and keeping the guns in the bank and under their * *

Ans. I do not know that they were.

Ques. 4th. If you were to see one man buy a gun for $10 from another and pay the money for it, would you not consider that an express contract to buy and sell a gun?

Ans. I would.

Ques. 5th. How long were you an assistant in the bank, and who
175 were the officers of the bank at the time, and at whose request were acting?

Ans. Jno. A. Taliaffero was the cashier, and Jessee T. Brown clerk of the bank, and I assisted the cashier several months at his request.

Ques. 6th. Were there other bills signed and issued after the commencement of the * * other than these change bills? I mean bills larger than one dollar. State as near as you can recollect the amount of new issue by your bank.

Ans. There were no bills signed at this branch after the beginning of the war larger than one dollar. I have no recollection of the amount issued.

176 Recross-examination:

Ques. 1st. Were any of these change bills which you say were signed by you and the officers of the Trenton Branch signed by the president of the bank?

Ans. They were not. I saw a few ten-cent bills in circulation with my name on them which were counterfeit.

Further this deponent sayeth not.

JNO. H. GLASS.

Sworn to and subscribed before me Dec. 13, 1880.

R. E. RAINS, *C. & M.*

We hereby waive certificate and all formalities as to caption and
177 certificate, and agree that the C. & M. may deliver this deposition to A. W. Campbell, attorney for complainant, and said Campbell deliver same to clerk of common law court of Madison County without further formalities, Dec. 13, 1880.

JNO. H. SAVAGE, *Att'y.*
CAMPBELL & JACKSON,
Att'y' for Pl'ff.

D. M. Wisdom's deposition was then read.

D. M. Wisdom's deposition.

Ques. 1. You will please state whether or not you were a soldier or officer in the Confederate army in the civil war and rebellion against the United States, and if so, state whether or not the Confederate troops,
178 or any part of them were paid off in the money now known and called the "Torbett" or "new issue" of the Bank of Tennessee, and state what troops were so paid, and the number; whether companies, regiments, divisions, and what commands were so paid (if any).

Ans. I was an officer in the Confederate army; I do not know how many, or rather to what extent certain troops were paid off in the "Torbett issue." I was captain of Company F., 13th Tennessee regiment (infantry), and whilst stationed at New Madrid, Missouri, or Columbus, Ky., I received pay for one or two month's service in Torbett or new issue. This took place either in the last of 1861 or first part of the year 1862, but I think it was in 1861.

179 Ques. 2nd. Do you mean that you, as an officer, was paid in new issue, or was your company and other troops *were also* paid.

Ans. I can't say positively who else was so paid except myself. I was in bad health at the time, and obtained permission of the colonel of our regiment to ride on horseback whenever the army or command was in motion. I sent the Tennessee money home to my father at Purdy, Tennessee, to buy me a horse; he did buy one, but said the man from whom he had bought the horse refused to take the "new issue money," and he requested me to send him other money to pay for the horse, and after some time the Tennessee money was returned to me, and I paid for the horse in Confederate money.

180 Ques. To what command did your company belong; I mean what general was in command of the troops, and what amount of Tennessee troops were in the command at the time you were paid?

Ans. I belonged to the 13th Tennessee Regiment, infantry, and while stationed at New Madrid, Mo., my recollection is that General McCann commanded our brigade; there were three regiments of Tennessee troops at New Madrid, as well as I recollect, viz: 4th Tennessee Regiment, 154th Tennessee Regiment, and 13th Tennessee Regiment.

Cross-examined:

181 Ques. 1st. Please state, as near as you can, how much Tennessee money was paid to you at the time spoken of in your examination-in-chief, as near as you can, and whether all of your pay was in the "new issue" or "Torbett issue" of the bank.

Ans. I was paid in "Torbett issue" entirely, I think, and my impression is I received one month's pay; it may have been two months. I think captains got $125.00 per month.

Ques. 2nd. Please state, as near as you can, at what time this payment was made.

Ans. It was in the fall of 1861, I think.

182 Ques. 3rd. Please state if there is any other fact in your recollection that makes you think you were paid in "new issue" of Bank of Tennessee, except that your father informed you that the party from whom the horse spoken of was purchased declined to receive it.

Ans. No other fact.

Ques. 4th. Then the fact that you were paid in "new issue" is not a fact within your own personal knowledge, and you only derived the information from your father?

Ans. I only mean to say that the fact of its not being taken in payment of the horse is a fact that fortifies my memory, and satisfies me that I received Tennessee money as stated in my examination-in-chief.

183 Ques. 5th. State whether the money was refused because it was "new issue" or becanse it was Tennessee money, and would the party not have refused the old issue as well.

Ans. The party to whom the money was paid might have refused to receive any kind of Tennessee money. I think he would, as he had great confidence in the ultimate triumph of the Confederate cause.

Ques. 6th. When you afterwards paid for the horse in Confederate notes did the party make any objection to receiving that kind of currency?

Ans. He did not, so far as I know.

184 Ques. 7th. Who was the paymaster who paid off the troops at the time you speak of?

Ans. I think George Dashiell was the paymaster.

Ques. 8th. Please state if you know that he paid any of the other soldiers besides yourself in "new issue" of the Bank of Tennessee.

Ans. I don't know positively that he did.

Ques. 9th. Can you remember what was the general custom of the country at that time in the circulation of the "old issue" and "new issue" of the bank, and whether any difference obtained among the people between the two?

185 Ans. I am not sure about the custom of the country, but I think generally the "old issue" has had a higher value than the "new issue."

And further this deponent says not.

D. M. WISDOM.

Sworn to and subscribed before me Dec. 14th, 1880.

M. D. MERRIWETHER,
D. Clerk.

Jesse F. Brown's deposition was then read.

Jesse F. Brown's deposition.

Ques. 1st. What position, if any, did you hold in the Bank of Tennessee before and after the commencement of the late civil war, or rebellion, as it is commonly called, against the United States?

186 Ans. I held the position of cashier of the branch at Trenton from the year 1860 until the war closed in 1865.

Ques. 2nd. What is your information as to the amount of what is called "new issue" or "Torbett issue" put in circulation by the bank of Tennessee from May, 1861 to May, 1865?

Ans. I have no accurate information as to the amount of these notes put in circulation, as nearly all of them, except some small or change notes, was put out by officers of the mother bank.

Ques. 3rd. In the ordinary legitimate business of the bank, as
187 carried on before the commencement of the war, was there any necessity for the issuance of these new notes?

Ans. I don't think there was after the war began, for, as a rule, the bank declined to pay out its own issue in the payment of depositors' discounts and bank balances after Confederate notes were put in circulation.

Ques. 4th. What currency was used by the Bank of Tennessee and its branches in paying discounts, depositors, and bank balances after the war commenced?

Ans. With but few and small exceptions, as far as I know, the
188 entire legitimate business of the bank was done with Confederate notes, after they were issued, to the close of the war. I mean by the words legitimate business all that class of business usually pursued before war was declared.

Ques. 5. Did the bank increase or decrease its legitimate business of discounting bills and notes after the commencement of the war?

Ans. In my branch there was a decided decrease after war was declared, up to the spring of 1862, when the bank was removed from the State, after which time my branch did no discounting of any kind. I under-
189 stood all the other branches pursued the same policy. The mother bank, I think, did some discounting with Confederate notes at Atlanta and Griffin, Georgia; the amount I did not ascertain, but from the nature of circumstances I would suppose it to have been comparatively small.

Ques. 6th. What amount, to the best of your impression and recollection, in new issue or small bills, made after the war commenced, did the Trenton branch issue and put in circulation?

Ans. I think the Trenton branch received and paid out about ($100,000) one hundred thousand dollars, more or less.

190 Ques. 7th. Did or not the officers of the branch Bank of Tennessee at Trenton buy guns for the Confederate States, and pay for the guns out of the money of the bank, and keep the guns in the bank under their control until sent to the armory?

Ans. There was a large number of guns purchased by the officers of the bank for the use of the army. These guns were paid for out money belonging to the bank, and were store' in the bank until sent to the army or taken charge of by its officers.

Ques. 8th. Did you, as such bank officer, pay or advance to Isham G. Harris, as rebel governor, any money for any purpose, and, if so,
191 state what kind of money, whether in Confederate or gold and silver, and upon whose order, and upon whose account, or for what purpose was it paid? State also the time, place, and amount of such payment, as near as you can remember.

Ans. Some time in the month of April, 1865, I think it was, I received an order from John C. Fisher, cashier of the Bank of Tennessee, to pay governor Isham G. Harris, some fifteen hundred or two thousand dollars in gold, as balance due him on the past years' salary as governor of Tennessee. This order was presented to me by Colonel Leon Trousdale, at Greensboro', Georgia. I paid him the amount of the order in gold, and took a receipt from him for it.

192 (The plaintiff excepts to the foregoing question and answer for irrelevancy and incompetency.)

Cross-examined by plaintiff:

Ques. 1. Was not the "new issue" notes, of which you speak of being sent by the mother bank to the Trenton branch, used by the bank in its ordinary business, and just as other currency which the bank had was used?

Ans. These small notes were used as change in all business transactions of the bank, I don't recollect that there was any of the old or new issue of the bank paid out in its legitimate business by the Trenton branch
193 beyond some small amounts in special cases, except the new or small notes above referred to. These small notes were used as change in all business transactions of the bank.

Ques. 2nd. Was not, then, a great deal of currency of different kinds, such as Union Bank and Planters' Bank notes, notes of the banks of other States, together with the issues of the Bank of Tennessee, both old and new, in circulation in the country where the Trenton branch was located,

which were received on deposit and in payment of debts due the bank, and paid out over the counter? If so, state if all of this class of currency was not used indiscriminately by the bank in its ordinary business before Confederate money came into general use in the country.

194 Ans. Yes, sir.

Ques. 3rd. Can you state that one dollar of the "new issue" of the Bank of Tennessee was ever used in the purchase of guns.

Ans. I think that some of these small notes were used in making change in purchasing guns, and perhaps paid for entirely.

Ques. 5th. Is not your last answer based upon the conjecture that some of those small notes were used in the purchase of guns because guns were being purchased and paid for about the time the small notes were put in circulation, and not upon any positive recollection of the fact?

195 Ans. We had no coin to make change and I concluded that the small notes must have been used in making change.

Ques. 6th. Were not the guns you speak of almost altogether old small bore rifles and rifle barrels, which were collected up from the farmers and others of the country, under the direction of the military authorities to be remodeled into guns of uniform bore? If so, state how many were brought at Trenton, as near as you can tell, and about what they cost.

Ans. The guns consisted of rifles, shot-guns, old flint-lock muskets, and sporting guns of all kinds, from the meanest to the best, which the people had in their hands. I think there was somewhere between six

196 hundred and a thousand of these guns bought at Trenton. The guns ranged along from two dollars and a half to twenty dollars each.

Ques. 7th. Please state if this gun business was not transacted under military authority, and was no part of the official duties of the bank officers as such.

Ans. Yes; the guns were bought in under military orders, and the bank officers paid for them and took charge of them at the request of the military authorities, and was not done under any orders from the bank that I know of.

Further sayeth not.

JESSE F. BROWN.

Sworn to and subscribed before me this Dec. 16th, 1880.

J. M. COLEMAN, *J. P.*

197 We agree to waive caption and certificate to the foregoing deposition, and that the same may be read on the trial of this cause subject only to exception for incompetency and irrelevancy.

And it is further agreed Alex. W. Campbell, of counsel for pl'ff, shall take charge of the same and by him to be delivered to the clerk of the law side of the common law and chancery court of the county of Madison, at Jackson, Tennessee.

Dec. 16th, 1880.

CAMPBELL & JACKSON, *for Pl'ff.*
JNO. H. SAVAGE, *for Def't.*

The ordinance of secession; the military league between the State of Tennessee and the Confederate States; also the act May, 1861; act

198 of July 1st, 1861; act of June 7th, 1861; resolution of May 8th, 1861; resolution of June 28th, 1861; act of November 23rd, 1861; act of 18 December, 1861; act of March 13, 1862, and governor's message were all read, and by consent they need not be copied in the bill of exceptions, but may be read from the printed acts or certified copies now on file, which may be attached to the record.

The defendant then offered to read the report of the special committee made to the legislature in regard to the Torbett issue, which is in the words and figures following:

Report of special committee to legislature.

From the senate journal of Oct. 9th, 1865, the following transcript is taken:

199 Mr. Speaker Frierson presented a communication (No. 31) from the committee appointed to examine the archives of the State and assets of the Bank of Tennessee, with the accompanying report of the same.

EXECUTIVE DEPARTMENT,
Nashville, Oct. 9th, 1865.

Hon. JOSHUA B. FRIERSON,
Speaker of Senate:

SIR: In compliance with a resolution of your honorable body, we have the honor to transmit herewith a detailed report of the result of the investigation of the committee appointed by us to examine the captured assets of the Bank of Tennessee. The amount of gold and silver found was $446,719.70, which was invested in United States 7.30 bonds
200 to the amount of $618,250.00, which sum is in the comptroller's safe. The bonds of the State of Tennessee issued prior to the pretended secession, found among said assets, are deposited for safe-keeping in the safe of the comptroller's office.

The assets of the branch at Clarksville, Sparta, and Trenton, exclusive of the specie and State bonds before referred to, are in the hands of the respective committees appointed by the legislature for that purpose. The assets belonging to the parent bank and the various other branches, except the specie and State bonds before referred to, are still in our hands.

For further information you are respectfully referred to the report of the committee herewith submitted.

Very respectfully,

W. G. BROWNLOW,
Gov. of Tennessee.
201 S. W. HATCHETT,
Comptroller.
A. J. FLETCHER,
Secretary of State.

On motion of Senator Trimble one thousand copies of the report were ordered to be printed for the use of the Senate.

NASHVILLE, *Oct.* 2, 1865.

To the governor, secretary of state, and comptroller of Tennessee:

GENTLEMEN: The committee appointed by you to examine the captured assets of the Bank of Tennessee, and the archives of the State, which were removed from the capitol by the fugitive governor and other State officials in the winter of 1862, have the honor to report that they have made
202 a careful and protracted examination of the same, and beg leave to submit the following memoranda as the result of their labors.

Very respectfully,

H. H. THOMAS,
Chairman of Committee.
A. W. HAWKINS.
SAM. HUNT, *Recorder.*

Memoranda.

Box No. 1, marked J. T. D.

CONTENTS.

1 note-register, belonging to the Bank of Claiborne.
1 note-register, Bank of Nashville.
1 " " " " Memphis.
1 " " " " Knoxville.
1 " " " " Murfreesboro' Exchange Bank.
203 1 note register, Bank of Middle Tennessee.
1 note register, Farmers' Bank of Tennessee.
1 free bank ledger.
1 comptroller's ledger.
1 note register, Bank of Trenton.
1 note register, Buck's Bank.
1 note register, River Bank.
1 note register, City Bank.
1 note register, Bank of the Union.
1 fee book.
1 receipt book of the commissioners of sinking fund of railroad containing two receipts issued after May, 1861, one for 22 bonds endorsed by the State of Tennessee.
1 *one* for 2 bonds, ditto.
1 package of payable warrants, No. 3751 to 3800.
1 package of payable warrants, from 2300 to 2399.
1 " " " " " 3501 to 3700.
204 1 package of payable warrants, from 3900 to 4000.
1 " " " " " 4700 to 4799.
1 " " " " " 3201 to 3275.
1 " " " " " 3801 to 3900.
1 " " " " " 4600 to 4699.
1 " " " " " 2400 to 2499.
1 " " " " " 3000 to 3100.
1 " " " " " 4501 to 4599.

1		"	"	"	"	"	4201 to 4300.
1		"	"	"	"	"	2800 to 2900.
1		"	"	"	"	"	4000 to 4100.
1		"	"	"	"	"	1600 to 1699.
1		"	"	"	"	"	4800 to 4899.
1		"	"	"	"	"	4401 to 4500.
1		"	"	"	"	"	4301 to 4400.
1		"	"	"	"	"	4101 to 4200.
1		"	"	"	"	"	2101 to 2199.
1		"	"	"	"	"	2600 to 2599.
1		"	"	"	"	"	2500 to 2599.
1		"	"	"	"	"	1 to 199.
1		"	"	"	"	"	651 to 750.
	1	"	"	"	"	"	2900 to 2999.
205	1	package of payable warrants, from 2051 to 2100.					
	1	"	"	"	"	"	1951 to 2050.
1		"	"	"	"	"	2200 to 2299.
1		"	"	"	"	"	300 to 349.
1		"	"	"	"	"	1851 to 1950.
1		"	"	"	"	"	450 to 550.
1		"	"	"	"	"	3101 to 3200.
1		"	"	"	"	"	551 to 650.
1		"	"	"	"	"	200 to 299.
1		"	"	"	"	"	2600 to 2699.
1		"	"	"	"	"	851 to 950.
1		"	"	"	"	"	1050 to 1150.
1		"	"	"	"	"	950 to 1050.
1		"	"	"	"	"	1151 to 1300.
1		"	"	"	"	"	751 to 850.
1		"	"	"	"	"	1401 to 1550.
1		"	"	"	"	"	1551 to 1750.
1		"	"	"	"	"	1301 to 1399.
1		"	"	"	"	"	1700 to 1850.
1		"	"	"	"	"	4902 to 4964.
1		"	"	"	"	"	2300 to 2384.
	1	"	"	"	"	"	951 to 1050.
206	1	package of payable warrants, from 1401 to 1500.					
	1	"	"	"	"	"	2000 to 2099.
1		"	"	"	"	"	1 to 150.
1		"	"	"	"	"	1051 to 1250.
1		"	"	"	"	"	851 to 950.
1		"	"	"	"	"	401 to 500.
1		"	"	"	"	"	3701 to 3750.
1		"	"	"	"	"	501 to 700.
1		"	"	"	"	"	2100 to 2199.
1		"	"	"	"	"	1700 to 1799.
1		"	"	"	"	"	301 to 400.
1		"	"	"	"	"	2200 to 2299.
1		"	"	"	"	"	1251 to 1400.
1		"	"	"	"	"	151 to 300.
1		"	"	"	"	"	1800 to 1899.

1 " " " " " 1900 to 1999.
1 " " " " " 1501 to 1600.
1 " " " " " 601 to 850.

1 package of railroad paper, the report of the receiver of the Wa. A. Railroad.

8 *eight* pack's of railroad paper, Edgefield and Kentucky Railroad.

207 The above box was delivered to Comptroller Hatchett.

Box No. 2.—J. T. D.

CONTENTS AND PAPERS.

7 pack's of aggregate taxes from 1850 to 1861.
1 package of letters labelled May, June, and July, 1860.
1 package of letters, February and March, 1859.
1 package of letters 1858.
1 package of letters, June to October, 1859.
1 package of letters, Dec., 1860, to March, 1861.
1 package of letters, 1857.
1 package of letters, April, May, June, and July, 1859.
1 package of letters, October, November, and December, 1860.
1 package of letters, February, March, and April, 1860.
1 package of letters, August, September, and October, 1858.
1 package of letters, September, October, November, and December, 1861.

208 4 packages of releases, from 1857 to 1860.
1 package of Dr. Burton's private papers.

1 package of miscellaneous papers, orders, &c., 31st December, 1865.
1 package of checks to pay circulation of Jefferson Bank, Tazwell, Claiborne, and Trenton.
4 pack's of papers relating to insurance companies.
1 package of certificates for fox and cat scalps.
1 package of clerk's report of land sold for taxes.
1 package of affidavits for payment of coupons 1861.
1 pack of letters, Aug. & Sept., 1860.
1 pack of letters, April, May, June, and August, '61.
1 pack of letters 1861.
1 pack of miscellaneous papers.
1 pack of miscellanous papers.

209 1 pack of return checks of army and medical board 1861.
1 pack of receipts for remittances to pay the army of Tennessee, September 17, 1861, $1,760,680.00.
1 pack of rebel conscript rolls.
1 " " " " "
1 " " " " "
1 book, abstract of receivable and payable warrants, 1855.
1 ledger of sinking fund for railroad with papers.
1 receipt to sinking fund.
1 note register of the Commercial Bank of Tennessee.
1 book containing distribution of school fund from 1854 to 1860.
1 note register, Bank of Tazewell.

1 comptroller's ledger, October, 1861.
1 comptroller's letter-book, 1847 to 1862.
1 book, blank sinking-fund checks.
1 note register, Dandridge Bank.
1 note register, Bank of Jefferson.
210 1 note register, Merchants' Bank.
1 note register, Bank of Paris.
1 note register, Northern Bank.
1 package of adjutant-general's letters, 1861, also comptroller's seal.

Box No. 3.—J. T. D.

CONTENTS.

1 large lot of cancelled coupons and State bonds.
1 large pack of blank notes of the different free banks of Tennessee.
1 lot of comptroller's blanks.
1 State bond, No. 117, with coupon.
1 receipt from Brown Bros. & Co., New York, for 41 State bonds.
1 large lot of cancelled capitol bonds.
1 pack of protests of the Branch Bank of Tennessee at Trenton.
1 bonds of the sheriff and constable of Union County.
1 papers giving the State of the branch bank at Rogersville.
211 1 note on Edward Willis, John Cradup, and others for $2,125.99 in favor of the comptroller of the State.
2 *two* notes on N. G. Phillips, Y. Wallen, and others, payable to the comptroller of the State, for $800.00 each, $1,600.
1 letter from Governor Harris to Dunlap asking for an estimate of the State's indebtedness to the C. S. A. in lieu of the war taxes; also Dunlap's reply. Estimate, $1,500,000.
1 package of papers, attorney-general's heads in the case of Sam. Tate, November, 1859.
1 package of circuit clerk papers of Shelby County.
1 package of letters, bills of cost, &c.
1 package of revenue reports and bonds of county officers.
2 packages of miscellaneous papers.
1 letter-book, commissioners of the sinking fund.
1 book of cancelled coupons.
212 1 day-book for the commissioners' sinking fund of the railroad.
1 book of cancelled coupons of capitol bonds.
1 book, cancelled coupons of State bonds.
1 book, abstract of receivable and payable warrants.
1 cash-book, comptroller's office from 1858 to May, 1862.
1 general ledger.
1 State revenue, comptroller's office.
1 letter-book, executive department Governor Harris.

Box No. 4.—I. G. H.

CONTENTS, BOOKS AND PAPERS.

1 pack reports, petitions, &c.

1 pack miscellaneous rebel papers, correspondence.
1 pack medical returns.
1 pack correspondence, returns, &c.
213 1 pack unimportant.
1 pack duplicate vouchers at Memphis.
1 pack duplicate vouchers medical board.
3 packs reports army medical board.
1 pack correspondence medical board.
1 bank-book and purveyor's receipts army medical board.
1 pack of credentials of house of representatives.
1 pack of fifty bonds Tennessee and Alabama Railroad Company, cancelled.
1 pack $128,000 Tennessee bonds, cancelled.
1 pack 104 bonds Tennessee and Alabama Railroad Company, cancelled.
1 pack 88 cancelled capitol bonds.
1 pack Tennessee and Alabama Railroad Company, cancelled.
1 pack coupon bonds Tennessee and Alabama Railroad, cancelled.
1 pack senate resolutions, 1861, 1862.
214 7 packs legislative papers.
1 pack military papers.
1 pack Tennessee army papers.
1 pack miscellaneous rebel letters.
1 pack unimportant letters.
1 pack of rebel correspondence.
1 pack of election returns.
1 pack of unimportant letters.
1 pack of 7 capitol bonds, cancelled.
1 pack of rebel correspondence.
1 pack of papers, army of Tennessee.
1 pack of $5,000 cancelled bonds.
3 memorandum books.
1 pack of rebel correspondence.
1 pack of rebel correspondence.
1 pack of miscellaneous papers.
1 pack " " "
1 pack of pardons.
1 pack of papers railroad commissioners.
1 pack miscellaneous papers.
1 book East Tennessee land grants.
1 book, record of pardons.
215 1 book, court docket.
1 book, journal proceedings of medical board of army of Tennessee.
1 book, East Tennessee land-grants.
1 cash-book, medical purveyor.
1 check-book, Bank of Tennessee.
1 book, commissioners' boundary between Kentucky and Tennessee.
1 book, original of senate and house journal, second extra session, 1861.
1 blank check-book.
1 executive book, pardons, warrants, proclamations, &c.

1 record book, medical purveyor.
1 auditor's report, 1861, C. S. A.
1 cash-book, surgeon-general.
2 copies of statutes of first congress C. S. A.
1 copying letter-book of Governor Harris.

Box No. 5.—J. E. R. Ray.

CONTENTS, PAPERS.

1 book of special orders of Major-General Pillow.
Letters and papers, public and private, pertaining to the army of
216 the Tennessee, under command of Major-General Gideon J. Pillow.

SPECIE.

Box No. 1., marked Bank of Tennessee, Nashville.

54½ lbs. bags, Branch Bank (Athens,) Tennessee, and contained 1 bag of gold, marked R. T. Ford, and containing $5,000 in 20's.
1 bag of gold, containing $2,280 in 20's, $120 in 10's, and $100 in 5's. The seal was broken previous to being opened by the committee.
1 gold bag, containing four smaller bags; first small bag containing $200 in ¼ eagles; also a leather attached, marked Bank of North
217 America, 200 E. C. Paid clearing-house ¼ eagles, 1857.
Second small bag, marked R. H. Lowery, esq., cashier, Bank of the Republic, New York City, from M. & H., $400, and containing $120 in 10's; also $880 in 1's.
Third small bag, tag marked $1,000, gold dollars, "Troror," &c., Nov. 12, '57. Contents, $1,000 in gold, in 1's.
Fourth small bag, marked $60, U. S. mint, Williams & Guin. Tag marked $1,000. Contents, $1,000 in gold, 1's.
Total contents of box No. 1, $10,70[illegible] in gold.

Box No. 2, marked B. B. T., Clarksville, Tennessee, lbs. 62, No. 69.

Contents, $1,000 in quarters.

Box No. 3, marked $20,000. Treasure Jackson.

Inside of the top marked H. L. L., Memphis; end of box 44 lbs.;
218 on the sealing-wax, Memphis. Contents, one bag of gold, containing $10,000, in 20's. The bag marked N. Rhodes, cashier, Somerville. This bag was to all appearances opened previous to being opened by the committee.

Box No. 4, marked lbs. 40½, No. 42, Bank of Tennessee. Contents, letters.

(Copy.)

BANK OF TENNESSEE,
Chattanooga, Tenn., Aug. 12, 1862.

W. W. CLAYTON, *Atlanta, Ga.:*

DEAR SIR: Please deliver to E. M. Bruce or order one bag of gold, containing five thousand dollars, and hold this receipt for same.

Very truly, &c.,

JOHN A. FISHER, *Cashier.*

(Endorsed:)

Received. Atlanta, August 16, 1862, from W. W. Clayton, agent,
219 five thousand dollars in gold coin, in accordance with the within order.

E. M. BRUCE & CO.

(Copy.)

LAKE PROVIDENCE, LA., *April 14th*, 1862.

MY DEAR SIR: This will introduce to you my brother-in-law, Mr. James B. Gordon, of Charleston, So. Ca., who is authorized to receive my special deposit left with the Bank of Tennessee in Nashville last summer.

I remain, dear sir, very truly, y'rs, &c.

B. F. FORD.

Mr. JNO. A. FISHER,
Chattanooga, Tennessee.

(Endorsed:)

$10,000. Received of Bank of Tennessee two bags containing
220 five thousand dollars each for the within order for the special deposit of ten thousand dollars.

JAS. B. GORDON.

MAY 7, 1862.

$5,000.] ATLANTA, GA., *May* 8, 1862.

Bank of Tennessee pay to F. A. Hammond or order five thousand dollars, in gold, being part of the balance to my credit as administrator of E. Howard, dec'd.

FISHER A. HAMMOND,
Administrator of E. Howard, Dec'd.

(Endorsed:)

Received Atlanta, Ga., May 12, 1862, by order of John A. Fisher, cashier Bank of Tennessee, from Wm. Clayton, agent, five thousand dollars in gold for this.

FISHER A. HAMMOND,
Adm. of E. Howard.

221 1 large bag, marked $600 silver coin, Branch Bank of Tennessee,

Knoxville, Tenn. Appended a tag marked "Forwarded by the Southern Express Company from Branch Bank of Tennessee, Knoxville, six hundred dollars, silver coin. Wm. W. Clayton, esq., agent, Atlanta, Ga.," and containing three small bags.

First small bag marked Branch Bank of Tennessee, Knoxville, Tennessee, containing $100 in old odd silver coin.

Second small bag, marked $300, in new quarters, Branch Bank of Tennessee, Knoxville, Tennessee, containing $300.

Third small bag, marked $200, in new quarters, Branch Bank of
222 Tennessee, Knoxville, and containing $200.

Box No. 5, marked Branch Bank Tennessee, Memphis, $20,000; lbs. 80; contents, four bags. No marks or brands perceivable on any of the bags.

First small bag, containing $3,400 in 20's, $1,300 in 10's, $200 in 5's, $100 in 2½'s; total, $5,000.

Second small bag, containing $3,000 in 20's, $2,000 in 2½'s; total, $5,000.

Third small bag, containing $560 in 20's, $40 in 10's, $4,400 in 2½'s; total, $5,000.

Fourth small bag, containing $500 in 20's, $10 in 10's, $4,490 in 2½'s.

223 Box No. 6. Marked lbs. 68, inside of the top marked J. P. G., $3; seal Branch Bank Tennessee, Memphis, and containing a large quantity of small silver coin, $939.00. Also bag marked Kennett Simonds & Co., St. Louis, patent shot, No. BBB, J. T. Hamblet, and containing $560 in 20's, $120 in 10's, $380 in 5's, $440 in 2½'s, $799 in 1's; in an envelope in various-sized gold coin, $95.00. Total, $2,394.00.

Box No. 7. Marked 65 lbs., Bank of Trenton, and containing $1,000.00 in dollars, 5 francs, and half dollars. Also containing a note marked J. C. Davis, March 16th, 1858, $1,000.

Box No. 8. Marked $20,000, Bank of Tennessee, Memphis, lbs. 58, and containing three bags of coin. Also papers, of which the follow-
224 ing are copies:

(Copy.)

$2,750. Received from Joel A. Battle, the treasurer of the State of Tennessee, twenty-seven hundred and fifty dollars in gold coin, being my salary as comptroller for the year ending 1st March, 1865.

J. T. DUNLAP.

The above is in duplicate.

$1,800. Received from Joel A. Battle, treasurer of the State of Tennessee, eighteen hundred dollars in gold coin, being a year's salary as secretary of state and internal improvement commissioner, ending 1st March, 1865.

J. E. R. RAY,
Sec. State.

The above in duplicate.

225 $20.00.] AUGUSTA, GA., *May 4th*, 1865.

Due John A. Fisher twenty dollars in gold.

JAMES GLOVER.

$500.] GRIFFIN, GA., *April 29th*, 1865.

One day after date I promise to pay to the order of S. R. Anderson five hundred dollars in gold at the Bank of Tennessee. Value received.

J. SHELBY WILLIAMS.

(Endorsed:)
Demand and notice waived.

S. R. ANDERSON.

Demand and notice waived.

S. C. GODSHALL.

(Copy.)

CONFEDERATE STATES OF AMERICA,
C. S. DEPOSITORY OFFICE,
Montgomery, Ala., March 25, 1865.

226 No. 1203. This will certify that Joel A. Battle, treasurer of the State of Tennessee, has paid into this office, in $100 bills, of issue prior to Feb. 17th, 1864, twelve thousand dollars, for which amount registered bonds of the Confederate States of America, bearing interest from this date at the rate of six per cent. per annum, will be issued to him under the act to reduce the currency and to authorize a new issue of notes and bonds, approved February 17th, 1864, approved June 14th, 1864, upon the surrender of this certificate of this office.

T. SANFORD, *Depositary.*

The notes were deposited prior to the 1st of January, 1865, but awaiting the certificate of the governor of Tennessee, now received.

227 #2 (two) bags of gold coin, $5,000 in 20's in each.

1 (one) bag gold coin, $3,400 in 20's; also one package of Confederate money, amounting to $7,100.

Box No. 9. Marked lbs. 24, Bank Rogersville, containing one bag containing one small bag.

Small bag contains $2,643 in gold, spurious moidores in another bag, and $58.95 in silver.

One bag, with tag marked Branch Bank at Rogersville, $250 in silver, correct by count, $335.38 in the box.

Box No. 10. Marked No. 70, W. W. Clayton, agent, Atlanta, Ga., lbs. 89, $1,500 in new halves and quarters, Branch Bank of Tennessee, Knoxville, containing $1,500 in silver coin, halves and quarters.

Box No. 11. Lbs. 100, marked Bank of Tennessee, Nashville, containing five small bags.

228 First small bag, marked $5,000, A. E. Filletson & Co., Marshall, and contains $5,000.

Second small bag, marked Mechanics' Bank, Augusta, $5,000, and contains $5,000 in one-dollar gold pieces.

Third small bag, marked A. Blizard, cashier, Athens, Tennessee, containing $5,000 in five-dollar gold pieces.

Fourth small bag, $5,000, marked with various figuring, and contains $5,000 in gold coin from 1's to 20's.

Fifth small bag, containing $5,000 in gold coin.

Box No. 12. Marked Bank of Tennessee, Trenton, lbs. 65, containing $1,000 silver dollars in 5 francs and ½ dollars.

229 Box No. 13. Marked lbs. 80, Bank of Tennessee, Knoxville; also Bank of Rogersville, containing three small bags.

First small bag, tag marked half-dollars $220, and containing $220.

Second small bag, marked Charles J. McKinney, $225, $300, $525, No. 59, containing $512.80 in odd coin.

Third small bag, marked No. 113, of C. C. Miller, 29th December, 1847, $680. Tag marked $400, No. 64, James, Sevier, Williams, Houston, C. J. McKinney, February 25, 1852, containing $400 in silver coin.

Fourth small bag, containing $100 in five francs.

Box No. 14. Lbs. 232, Branch Bank of Tennessee, Shelbyville, $650,
230 taken out to be replaced by Fisher, signed Wilcox.

One bag containing $6,890 in gold, various coin.

One bag containing $1,602.50 in various coin.

One bag marked $10,000, and containing $10,000 in different denominations.

One bag $6,000, and containing $6,000 of various coin.

One marked forwarded from Montgomery, Ala., by Adams Express Co., to Branch Bank of Tennessee, Shelbyville, Tennessee, $4,521.42, and containing $4,521.42.

One marked $4,000 in double eagles.

One marked $3,600, containing $3,600 in various denominations.

One marked $5,000, and containing $5,000.

231 One marked $5,500, P. Brown, agent, and containing $5,500.

One marked $6,560 and containing $6,560, from Montgomery, Alabama, to Branch Bank of Tennessee, at Shelbyville, by Adams' Express Co.

One marked, forwarded by Adams' Express Company, from Montgomery, Alabama, to Branch Bank of Tennessee, at Shelbyville, $5,670, and containing $5,670.

Box No. 15. Lbs. 64, Bank of Tennessee, Trenton, containing one small paper, marked John L. Davis, $1,000, March 16th, 1858; also, silver to the amount of $1,000.

Box No. 16. Bank of Tennessee, Clarksville; loose silver coin, $358.85

One small bag containing a small package of gold, $331.85;
232 also, 1 $20 bill, of Bank of Tennessee, in two pieces, with a cer-

tificate of James Wilcox, cashier, that $1,100 had been paid from this box to John F. Coats, on the 7th July, 1862; also, in silver, $208.95.

Box No. 17. Lbs. , Bank of Tennessee, at Jackson, Tennessee.

One bag marked $5,000 and containing $5,000 in double eagles.
One bag marked $5,000 and containing $5,000 in half eagles.
One bag containing $5,000 in $2.50 pieces.
One bag marked $5,000 and containing $5,000 in eagles.

Box No. 18. Lbs. 100, J. Morton, Nashville, Bank of Tennessee.

One bag marked $5,000 and containing $5,000 in double eagles.
233 One bag marked $5,000 and containing $5,000 in different sized coin.
One bag marked and containing $5,000.
One bag marked and containing $5,000 in different sized coin.
One bag marked $5,000 and containing 3 small bags containing $1,000 each, and 1 containing $2,000.

Box No. 19. Lbs. , Bank of Nashville, and containing in half dollars $1,000.

Box No. 20. Lbs. , treasure, bank at Jackson.

1 bag, marked Bank of England, and containing $6,000 in double eagles.
234 1 bag containing $5,000 in double eagles.
1 bag containing $5,000 in double eagles.
1 bag containing $5,000 in double eagles.
1 bag containing $5,000 in double eagles.

Box No. 21. Lbs. 79, marked Win. W. Clayton, agent, Atlanta, Ga., containing in loose silver coin of various denominations $1,248.15.

Box No. 22. Lbs. 64, Trenton, Tennessee, containing $1,000 in silver coin of different denominations. It contained a memorandum from J. L. Davis, showing the box to contain $2,000, March, 1858. This memorandum was left out.

235 Box No. 23. Lbs. 81, marked treasure, Jackson, Tennessee, containing—

1 bag marked $5,000 and containing $5,000 in eagles.
1 bag marked Memphis Life and General Insurance Co., $5,000, containing $5,000 in double eagles.
1 marked $5,000, containing $5,000 in double and quarter eagles.

Box No. 24. Lbs. 62. All other marks unintelligible. Contents, $998.25 in quarters.

Box No. 25. Lbs. 65, Bank of Tennessee, Trenton, and contains $1,000 in silver coin of different denominations.

Box No. 26. Lbs. 72, Branch Bank, at Rogersville.

1 bag marked No. 52, $600, and containing $600 in silver of different denominations.

236 1 bag marked and containing $5,000 in silver coin of different denominations.

Box No. 27. Lbs. 60, treasure, Jackson, Tennessee, and contains $1,000 in silver half dollars.

Box No. 28. Lbs. 62, Bank of Tennessee, Trenton, and contains $1,000 in half dollars.

Box No. 29. Lbs. 80, Branch Bank of Columbia, Tennessee, and contains 1 bag marked and containing $5,000 in double eagles.

1 marked $4,200 and containing $4,190 in various gold coin.
1 bag, $30, in various silver coin.
Also $630 in dimes and half dimes—packages of $5.

237 Box No. 30. Lbs. 74, Branch Bank at Athens, Tennessee, and contains $1,200, dimes and half dimes.

Box No. 31. Marked lbs. 62½, Branch Bank of Tennessee, at Sparta, and containing—

One bag containing $952.30 in gold coin; also in odd silver coin, $24.36; loose money in the box, $904.96 in silver; $750 in gold.

Box No. 32. Marked lbs. 50, Bank of Tennessee, Memphis, $20,000, and containing three small bags.

One bag, untied, and contains $1,360 in 20's.
One bag contains $340 in 20's; $4,660 in 5's.
One bag contains $440 in 20's; $60 in 10's, and $4,500 in 2½'s.
One entire bag supposed to have been removed.

238 Box No. 33 is a small keg, marked lbs. 194, and contains ten small bags.

10 bags containing $5,000 each.

Box No. 34. Marked lbs. 99½, treasure, Jackson, Miss., and containing five small bags.

5 (five) bags containing $5,000 each.

Box No. 35 is a large keg, marked $4,256.40, Bank of Tennessee, Nashville, Tennessee, Bank of Clarksville, and contains nine bags of silver coin.

1 large bag containing				2,002	00
1 small	"	"		248	25
1	"	"	"	251	25
1	"	"	"	188	25
1	"	"	"	188	50
1	"	"	"	188	75
1	"	"	"	189	25
1	"	"	"	187	25
1	"	"	"	*757	00(9)
Total				4,200	50

239 (* The above calculation was made by weight by first weighing a certain amount and computing the remainder therefrom. The contents of the keg were entirely one-quarter dollars except No. 9, which was in dimes.

Box No. 36. Marked lbs. 57, Clarksville Branch Bank of Tennessee, and containing $20 in gold and $1,365.60 in silver dimes.

Box No. 37. Marked lbs. 64½, $30,000 in gold, Bank of Tennessee, Nashville, Tennessee, Knoxville, and containing important loose gold coin, and one small bag.

(Copy.)

6 bags of gold, $5,000 each, $30,000, belonging to branch Knoxville.

240	Gov. Harris	$750 00
	Gen. Atkins	1,000 00
	Col. Trousdale	500 00
		2,250 00

Taken by order of Cashier Fisher, Greensboro', Georgia, April 21, 1865.
J. F. BROWN.

(Copy.)

AUGUSTA, *April 26th*, 1865.

BANK OF TENNESSEE:

Pay to myself, in coin, one thousand, in part of salary due me.
H. L. CLAIBORNE.

In the event it becomes my duty in equity to return this coin and receive other funds in payment, then I am to return it.

(Copy.)

$1,000.] GRIFFIN, GA., *April* 17, 1865.

241 One day after date we promise to pay the Bank of Tennessee or order one thousand dollars in gold coin for value received. Witness our hands and seal.

J. D. C. ATKINSON. [SEAL.]

(Copy.)

$750.] GREENSBORO', GA., *April* 21, 1865.

Received of Bank of Tennessee seven hundred and fifty dollars, in gold, in full of one-quarter salary as governor of State of Tennessee.

I. G. HARRIS, *Governor, &c.*,
Per LEON TROUSDALE,
Col., & A. D. C.

This receipt to be cancelled by Gov. Harris' own receipt, in the hands of Mr. T. D. Flippin, for same amount.

(Copy.)

AUGUSTA, GA., *April* 17, 1865.

T. D. FLIPPIN, Esqr., *Griffin, Ga.:*

DEAR SIR: Pay to Gen. J. D. C. Atkins, in gold, the receipt of
242 Gov. Isham G. Harris for ($750) seven hundred and fifty dollars, which he holds. Also loan him one thousand dollars in gold and take his note accordingly, the form of which note I herein enclose. You had better open one of the boxes belonging to the Athens branch, if convenient, as we loaned Cleag $50,000; but if not convenient, then open the box belonging to the Shelbyville branch, and count the whole contents, as I wish to know how much it contains, and leave the receipt and note in the box to represent the $1,750, which you give to Atkins.

Truly y'rs, &c.,

JNO. A. FISHER, *Cashier.*

(Copy.)

Received from Joel A. Battle, treasurer of Tennessee, two thousand dollars in full of my salary as treasurer from the 6th of March, 1864,
243 to the 6th of March, 1865.

JOEL A. BATTLE, *Treasurer.*

AUGUSTA, *April* 25, 1865.

The above is a duplicate.

S. H.

(Endorsement.)

AUGUSTA, *April 26th*, 1865.

Received the amount of the within receipt in gold, which I promise to return to the bank when it is established in Tennessee.

JOEL A. BATTLE.

Received of Joel A. Battle, treasurer of Tennessee, seven hundred and fifty dollars in gold coin, which is in full of my salary as governor of Tennessee for the quarter ending the 1st of Febr'y, 1865.

ISHAM G. HARRIS.

GREENSBORO', GA., *March* 17, 1865.

244 The above is in duplicate with this additional remark: Leon Trousdale, aid-de-camp, has receipted for the last above-named receipt, which Col. Battle can take up with this.

J. A. C. ATKINS.

(Copy check.)

AUGUSTA, GA., *April* 25, 1865.

$550.00.] No. 1. Original.

At two days after sight, pay to the order of E. M. Bruce, at the Bank of

Montreal, Canada, five hundred and fifty dollars in gold, value received, and place to account of—

HUMPHREY MARSHALL.

To CHARLES E. MARSHALL (care of Walker & Lees),
City of N. Y., U. S.

The above is in triplicate.

(Copy.)

$1,000.] AUGUSTA, GA., *April 27th*, 1865.

245 Pay to self one thousand dollars in American coin.
To Branch Bank of Tennessee, Trenton.

J. F. BROWN,
Br. B'k Trenton.

(Copy.)

GREENSBORO', GA., *April* 27, 1865.

$500. One day after date we promise to pay the Bank of Tennessee, or order, one thousand dollars in gold coin for value received. Witness our hands & seals.

LEON TROUSDALE. [SEALS.]

(Copy.)

$1.000.] AUGUSTA, GA., *April* 27, 1865.

Pay self one thousand dollars in American coin.

THOS. A. CLEAG,
For B. R. STRONG, *Char.*

To Br. B'k, Knoxville.

246 (Copy.)

$1,000.] AUGUSTA, GA., *April* 27, 1865.

Pay self one thousand dollars in American coin.

THOS. A. CLEAG,
For J. H. RAMSEY.

To Br. B'k, Tenn., Knoxville.

(Copy.)

$1,000.] AUGUSTA, GA., *April* 27, 1865.

Pay self one thousand dollars in American coin.

THOS. A. CLEAG.

To Br. B'k Tenn., Athens.

Also loose gold to the amount of $10,175.
1 small bag containing in silver $378.82.

247 Box No. 38. Marked lbs. 57½, Bank of Tennessee, Trenton, and containing loose silver, $843.65.

1 bag, containing $248.75 in silver.

Box No. 39. Marked No. 42, lbs. 63, W. W. Clayton, Atlanta, Ga., and containing $982.20 in half-dimes.

Box No. 40. Marked lbs. 66, Bank Tennessee, br. bank Rogersville, and containing—

1 bag marked $309.25 and containing $168.25 in silver dollars.
1 bag marked silver dollars $370 and containing $370.
1 bag tag marked $370 silver, Simpson & Bro., Mar. 27, 1853, and containing $300.

Box No. 41. Marked Branch Bank Tennessee, Sparta, No. 3, and containing $17,111.44 in gold.

248 Box No. 42. Marked lbs. 29, half-dimes; also other marks not legible, and containing $414.20 in silver; also a very small amount in old and new bank-notes.

Box No. 43. Marked Columbia $5,000, other marks illegible, and containing in silver coin $1,610.

Box. No. 44. Marked lbs. 62, Branch Bank Nashville, Tennessee, Branch Bank Tennessee, Rogersville, containing in silver $994.50.

Box No. 45. Marked No. 41, lbs. 77½, branch at Rogersville, and containing—

1 bag marked 62, $196 in five francs; 73, tag marked $195 in five francs, C. J. McKinney, O. Rice, and contained $200.
249 1 bag marked No. 62, $160, $200, tag marked $160, and containing $134.40.
1 bag tag marked $83.04, No. 65, February 25, 1852, James Sevier, Wm. Houston, R. G. Train, and containing in old silver coin $83.04.
1 bag marked No. 54, $500, and containing in old silver $500.
1 bag marked D $220+10=230+70=300—50=250, and containing in odd silver coin $248.54.

Box No. 46. Marked lbs. 62½, W. W. Clayton, agent, Atlanta, Ga., $1,000 dimes, Branch Bank Tenn., Knoxville, and containing $1,000 in silver.

Box No. 47. Marked lbs. 117, seal Bank of Tennessee, and containing 6 (six) bags containing $5,000 each, $30,000.

Box No. 48. Marked lbs. 62, Nashville, and containing $1,000 in ½ dimes.

250 Box No. 49. Marked lbs. 63, Nashville, Tennessee, and contains two small bags of silver, $500 each, $1,000.

Box No. 50. Marked W. W. Clayton, agent, Augusta, Ga., lbs. 62, and containing $1,000.

Box No. 51. Marked Treasure, Jackson, Miss., and containing $1,000.

Box No. 52. Marked W. W. Clayton, agent, Atlanta, Ga., lbs. 63½, and containing $1,000.

Box No. 53. Marked lbs. 61, Jackson, and containing $1,000 in half-dimes.

Box No. 54. Marked lbs. 70, other marks not legible, and containing in gold $16,628.08.

251 Box No. 55. Marked $1,000, treasure, Jackson, Miss., lbs. 62, and containing $1,000.

Box No. 56. Marked $1,000, treasure, Jackson, Mississippi, and containing $1,000.

Box No. 57. Marked A. C. B., J. F. Brown, Nashville, Tennesse, 155, and containing—

3 bundles of papers and old money.

1 package of Northern and Southern States bank money, containing $490; also certificate of deposit in favor of Jeff. Talifero.

1 package of mutilated notes, Bank of Tennesse, marked $434.

1 package of Trenton notes, Bank of Tennessee, marked $55.

1 package of uncurrent and broken bank notes marked $481.

252 1 package marked sundry vouchers or parts of bills, with affidavits, belonging to Trenton branch, amounting to $999.80.

1 package of Confederate money containing $890.

1 package of Trenton notes $22, good, the remainder fractional currency, issued since the rebellion; package marked $60.

1 large package of unissued bank bills, signed but not dated or numbered.

1 package of coupons 114 Tennessee State bonds.

2d. Bundle three packages of protested notes, drafts, bills of exchange, &c.

3d. Bundle marked Branch Bank of Tennessee, Trenton, & containing 1 pack of sundry vouchers.

1 pack containing three old bonds.

1 pack notes, "past due."

253 1 pack marked J. M. Moore, receipts.

1 pack notes paid and cancelled.

1 pack checks marked W. W. Freeman.

1 pack notes, John A. Taliafero.

3 packs protested notes, checks, drafts' bills of exchange, &c.

Examination of large boxes resumed.

Box No. 6. Marked "State papers," and containing a large lot of promiscuous stationery:

2 books' senate journal, session of 1861—'62; Nos. 1 and 2.

1 pack reports assistant commissary-general provisional army of Tennessee.
1 package quartermaster's papers.
1 record-book school commissioners.
1 ledger, letter D., Bank of Tennessee and branches.
254 1 receipt book, Adams Express.
1 book, list of the population of Cocke County.

Box No. 7. Marked J. E. R. R.

CONTENTS.

1 pack of quartermaster's papers.
1 pack of turnpike company's papers.
1 pack of petitions for pardons.
1 pack of pay returns for 1863.
3 packs of envelope election returns.
1 pack of quarterly returns, first quarter, 1863, 5th Tennessee regiment.
2 packs of miscellaneous papers.
4 packs of cancelled State bonds.
1 pack of quarterly returns, 1862, retained.
1 pack official bond of Col. Battle et al.
1 pack of cancelled State bonds.
1 pack of legislative bills, and resolutions.
1 pack of election returns.
1 book, Hiwassee grants.
255 1 book, record of the electoral college.
1 " original laws, 1st and 2nd extra session 1861–'62.
1 book, grants mountain district.
1 book, county academies.
1 " Hiwassee grants.
1 " executive pardons.
1 " executive record, sec. state.
1 " revenue comptroller's office.
1 " Middle Tenn. county grants.
1 " insurance company.
1 " grants, Ocoes district.
1 " pardons, 1851.
1 " coupon bonds for defense of the State.
1 " bond book.
1 " requisition on the governor.
1 " grants, mountain district.
1 " executive record; civil officers.
1 " receipts secretary state's office.
1 " endorsed bonds.

256 Box No. 8. J. W. Duncan, esqr., Augusta, Ga., containing blank book of the Atlanta Insurance Company.

Box No. 9. Marked J. E. R. R.

CONTENTS.

1 pack, six cancelled bonds.
1 pack, two cancelled bonds.
1 pack papers, Winchester and Alabama Railroad.
1 pack papers; two cancelled State bonds.
1 pack papers relating to the code.
1 pack papers, Knoxville and Kentucky R. R. Company.
1 pack papers; cancelled bonds.
1 pack bonds for arms.
1 pack justice's returns.
1 pack cancelled bonds.
1 pack memorandum of banking.
1 pack receipts for Head's reports.
1 pack State officers' bonds.
1 pack Hardin County receipts.
257 1 pack clerk's bonds, 1860.
1 pack bonds of officers of the Bank of West Tennessee.
1 pack bonds of officers of the bank of Tennessee.
1 pack bonds for arms.
1 pack pardons for 1860–'61.
1 pack Nashville and Chattanooga R. R. Company papers.
1 pack memoranda of Literary and Mechanical Society.
1 pack Central Southern R. R. Company.
1 pack cancelled bonds.
1 pack circuit & county court clerk bonds.
1 pack bonds of officers Bank of Tennessee, 1842–'47.
1 pack Union Bank officers, old.
1 pack reports of railroad companies.
1 pack Memphis & Ohio R. R. Co. papers.
258 1 pack bonds of bank officers branch at Trenton.
1 pack McMinville and Winchester Railroad.
1 pack Edgefield and Kentucky R. Road.
1 pack Nashville & Northwestern R. Road.
1 pack Miss. and Tenn. Railroad.
1 pack East Tenn. & Virginia R. Road.
1 pack turnpike papers.
1 pack Mobile & Ohio Railroad.
1 pack clerk's bonds, 1860–'61.
1 " " " " "
1 " capitol bonds, cancelled.
1 " East Tenn. & Georgia R. Road.
1 " cancelled capitol bonds.
1 " Rogersville & Jefferson R. Road.
1 " East Tenn. & Virginia R. Road.
1 pack Memphis & Charleston Railroad.
1 pack miscellaneous railroad papers.
1 pack Charleston, Cincinnati, and Cumberland Gap Railroad.
259 1 pack Memphis, Clarksville and Louisville Railroad.

1 pack cancelled capitol bonds.
1 pack receipts for Sneeds Reports.
1 pack cancelled bonds.
1 pack railroad & turnpike papers.
1 pack cancelled bonds.
1 pack Charleston & Cincinnati R. Road.
1 pack Edgefield & Kentucky R. Road.
1 pack railroad leases.
1 pack bonds for State arms.
1 pack report on railroad iron.
1 pack bonds of clerk and other officers.
1 pack bonds of State officers & others.
1 pack miscellaneous & railroad and other papers.
12 packs North Carolina grants.
1 pack North Carolina military warrants.
1 pack index to N. C. grant-book.
1 pack military warrants for State of Tennessee.
2 books bonds.
260 1 book, executive record.
1 book, western district grant.

Box No. 10, marked W. T. McG.

CONTENTS.

1 pack cancelled checks.
1 pack Knoxville correspondence.
1 pack checks and receipts, lunatic asylum.
1 pack miscellaneous papers.
1 pack payable warrants.
2 packs treasurer's checks.
1 pack Granger County papers.
1 pack receivable warrants.
Also, one large lot of receipts, cancelled checks, vouchers, books, and papers, belonging to the treasurer's office.

Box No. 11, marked A. G. T.

CONTENTS.

1 book senate and house journals, extra session, January, 1861.
261 1 book, governor's proclamation, secretary of states's office.
4 comptroller's book receipts for bank-notes burned.
1 record military appointments.
1 register commissioner's military office, 1840.
1 book coupons, cancelled straight bonds.
1 book writs of election.
1 pack of sundry papers.
1 receipt-book sec. state office.
19 books legislative journals 1861-'62.
Large lot of public acts of 1861 & '62.

Box No. 12. Marked J. B. Duncan. Contents, books, papers, checks, and other valuables belonging to the Atlanta Insurance Company, Ga.

Box No. 13. Marked Col. Wright, Ga.

REPORT CONTENTS.

262 4 bags containing entirely private correspondence of Gen'l Gid. J. Pillow.

Box No. 14. Marked .

CONTENTS.

Tin box from vaults of City Bank of Augusta.

One valise from vaults Knoxville, by D. Strong, cashier. Contents:

1 tin box containing four packages, marked $100,000 each, interest notes C. S. A., $400,000, Athens branch.

1 pack, marked $10,000, M. B. M., January, '63, Knoxville. Confederate notes.

1 pack marked $1,000.00 from King and Alexander County claims for soldiers' families.

1 pack marked county claims for soldiers' families, $389.00.

1 pack of same, $476.75.

1 very small package of sundry memoranda.

1 note-book containing notes, drafts, and various memoranda.

263 7 memorandum-books containing sundry papers.

1 pack containing 16 small packs of C. S. A. fractional currency.

1 pack marked $8,000.00, in Tennessee war bonds.

1 pack of bank-notes, old issue, $16,000, marked Bank of Tenn. notes, Athens branch.

1 pack marked McCraskeg's account.

1 pack marked $5,000. W. H. Ballard. Spe. deposit Tennessee war bonds.

1 pack marked $8,000.00 Tenn. war bonds; $20,431.12 C. S. A. 8's. Thos. A. Cleag.

1 pack marked 1,200 bank-notes; 100 taken out by J. K. Rowan. Thos. A. Cleag, care of B. R. Strong, Augusta; from J. K. Rowan.

1 pack of Confederate bonds, of J. K. R., for bal. on bills T. A. C.

1 pack marked $50,000, C. S. A. bonds.

264 1 pack marked cancelled notes, checks, &c.

1 pack C. S. A. bonds. Thos. A. Cleag, care of Dr. B. R. Strong, Augusta; from J. K. Rowan.

1 pack marked T. A. C., containing sundry parcels, C. S. A. bonds and other papers.

1 package marked Thos. A. Clage, spe. deposit by Maj. Gallespie, C. S. A. bonds.

1 pack marked 15,000 bonds of J. W. Duncan, C. S. A. bonds.

1 pack T. A. C., sundries.

1 pack marked spe. deposit, T. Nixon Van Dyke, Athens, McMinn County, Tenn., containing Confederate bonds.

1 pack sp'l deposit securities and vouchers, T. Nixon Van Dyke, guardian of Henrietta M. Campbell, Athens, McMinn County, Tenn.

1 pack marked W. H. Ballew, Athens, Tenn., containing the
265 will of D. Dorsey, sr.
1 pack marked T. A. Clage, Q. M. Clage.
1 pack marked P. Short, specie paid; special deposit containing Southern bank-notes, $85.00.
1 pack marked S. J. Rowan, and containing old bank money and Confederate bonds and money.
1 pack marked Georgia eights and sixes, T. A. C.; invested for different parties.
1 pack marked Pleasant Short, esq., Calhoun, Ga., containing receipts, &c.
1 small pack of old bank money, containing $153.00, left by G. W. York for John Smith, sp'l deposit.
1 pack marked T. A. Clage, ch'r, 10,000 Confederate notes.
1 pack marked C. Zimmerman, 8,000 Confederate bonds; containing also sundry individual notes amounting to about $20,000.
266 1 pack $50.00 Confederate fractional currency.
1 pack marked Dr. King, $9.00 in gold; special deposit.
1 pack marked Nep. Dunn, $50.00, Mechanic's Bank of Georgia.
1 pack marked miscellaneous.
1 set of diamond jewelry marked D. H. C. Spence, Murfreesboro.
2 gold watches.
1 gold chain.
Valise; contents: marked T. W. V., Tenn., containing one bushel more or less of Confederate currency.
1 pack of South Carolina money, said to contain $2,000.00.
1 pack of miscellaneous papers.
1 pack protested papers and attorney receipts.
1 pack one hundred sheets of 1's, Bank of Tennessee, belonging to Knoxville branch.
267 1 pack containing three N. & C. R. R. bonds, $1,000 each. Also $1,000 in old Southern money.
1 pack of good Tennessee money, containing $4,750.
1 pack sp'l deposit & sundry papers.
1 pack containing two packs of old mutilated Tennessee bank bills, $100 and $118=$218. Also one note of hand for $1,666.66 by B. and W. H. Huffins, endorsed by W. P. Martin, Joseph A. Mabry, and G. W. Mabry.
2 packs good Tennessee Bank money, $1,000.00 each.
1 pack of Southern money. South Carolina Bank money, marked $20,000; belongs to the branch Bank of Tennessee, Knoxville.
1 pack Southern Bank, marked $10,000. Branch Bank Tennessee, Knoxville.
268 1 small bag containing $10.00 gold; also some silver.
2 packs $1,000.00 each, Mechanics' Bank, Augusta, Georgia.
1 pack, $465.00, Southern Bank notes.
1 pack Southern money, marked $61.00.
1 small pack (envelopes) containing two $1,000 bills, Bank of Tenn., good. Also $30.00 in mutilated Tennessee Bank bills. Also some $1,000 notes, new issue, not good.
1 pack marked $100.00 in Confederate and other money.
1 pack marked counterfeit money, bank notes.

1 pack special deposit, W. C. Danner, of Knoxville.
1 pack marked $69.00, notes of the Bank of Chattanooga.
1 pack Chattanooga Bank, $85.00.

269 1 pack marked R. J. Jarnagin, special deposit, and containing $4,312.00 in Bank of Tennessee and other Southern money, good; various small packages, containing in the aggregate $41,882.00, in notes of different Southern banks. Specie, $234, special deposit, M. T. Haynes, receiver. Also $10.00 more.

1 jewelry case, containing one lady's gold watch, various articles of jewelry, and one dollar in gold pin, marked Wm. H. Graves.

Box No. 15.

This box bears no marks. Contents: 4 large general ledgers, belonging to the Bank of Tennessee. Also a number of blank books and drafts. Also a large number of files of old papers.

270 Box No. 16. Marked Trenton Branch Bank of Tennessee. Books pertaining to the Branch Bank of Tennessee, at Trenton.

Box No. 17. One blue box, marked Branch Bank of Tennessee, Trenton, and containing files of old papers.

Box No. 18. One large blue box, marked Branch Bank of Tennessee, Trenton, and containing old books pertaining to the Trenton Branch.

Box No. 19. Marked Bank of Tennessee, Nashville, and containing ledgers, records of checks, and several large books of coupons paid.

Box No. 20. Marked Bank of Tenn., Nashville.

271 This box contains the most important of the bank papers yet examined, consisting of books, papers, &c.

Box No. 21. Marked Bank of Tenn., Nashville.

Contents as follows:

MEMORANDUM.

Tennessee 8's	3,654,000 00
Confederate States 6's	459,000 00
" " 7's	403,000 00
" " 6's non tax	768,600 00
" " 8's " "	298,850 00
" " cotton bonds	48,000 00
	$5,632,050 00

Box No. 22. Marked Bank of Tennessee, Nashville, Tenn., and containing—

1 tin box, marked $76,527.50, George R. Powell, cashier, Rogersville.

This is scratched out on the box, and containing only confederate currency.

272 1 tin box, marked Bank of the Union (the "Union" scratched out) and containing one envelope, said to contain and marked $4,205.00 in State coupons. One envelope containing coupons $720.00, belonging to E. F. Johnson. One package marked Mrs. Thomas Sharp, collateral for $400.00. One receipt of Isham G. Harris for $3,000.00 in gold coin as salary as governor from Nov. 1st, 1863, to Nov. 1st, 1864, dated March 17th, 1865; also $20.75; also a large amount of Confederate bonds and currency and military vouchers; a general note marked $459,619.85.

1 tin box, marked Bank of Nashville, and containing one pack of notes Bank of Clarksville, $527.00; supposed to be good. Several packages of old mutilated notes of the Bank of Tennessee.

273 1 tin box, marked Bank of Tazewell, and containing memorandum marked $207,900.00, all Confederate money.

1 tin box, marked Bank of Middle Tennessee, and containing memorandum marked $321,913.25 Confederate money.

1 tin box, marked Gen. R. Powell, Bank of Tennessee, at Rogersville, and containing two packs of old mutilated notes, one pack of good money, old bank notes, mostly Bank of Tennessee, $1,446.00, one note of hand, given by J. H. Dorser, Sept. 15, 1859; also containing various old books and files of old papers.

Box No. 23.

1 pack containing twenty-three (23) State bonds, $1,000 each.

274 1 pack containing nine (9) bonds, $1,000 each, East Tennessee and Virginia Railroad bonds (endorsed) assigned to Isham G. Harris and his successor in office as sinking fund for railroad.

1 pack, G. H. Nixon, five (5) State bonds.

1 book containing protested notes, bills, &c.

6 six per cent. State bonds.

7 five and one-fourth per cent. State bonds, all belonging to the sinking fund.

1 pack marked special deposit, Maj. John J. Turner, containing three (3) bonds Louisville and Nashville Railroad Co., and divers Confederate bonds.

1 pack containing eighteen (18) State bonds.

1 Nashville and Chattanooga bond.

1 pack, marked Oath of the directors and officers of the bank, & other papers.

2 envelopes, containing Sumner County coupons.

1 pack of various letters and papers.

275 1 pack, marked coupons, July 1, 1860, Thomas Martin, agent, $5,280.00.

1 bond of James C. Rye, cashier of the Branch Bank at Columbia.

1 bond of W. T. Dortch, teller of the Bank of Tennessee.

1 envelope, marked six (6) notes, left as collateral to secure debts due from H. S. French to B. Rofton, Feb'y 7th, 1861.

1 pack containing various notes, insurance policies, &c.

7 bonds of the Nashville & Chattanooga Railroad, also one bond city of Memphis, all belonging to the sinking fund.

1 appointment of Ellen Cooper as executrix of the estate of Geo. Cooper.

1 envelope containing State bond for $1,750.00 belonging to the sinking fund.

276 1 tin case containing 103 $1,000 bonds, also 3 $1,000 bonds Louisville and Nashville Railroad Co., marked property of Eli Odum.

14 $1,000 bonds of the E. Tenn. & Ga. Railroad, belonging to the sinking fund.

1 city of Memphis bond, endorsed.

1 pack containing sundry papers.

1 large pocket-book containing deeds and sundry papers.

1 pack of mutilated small notes.

1 pack containing various memoranda, books, deeds, mortgages.

1 pack of deeds and other papers.

1 pack receipts C. S. A.

1 pack letters and other papers.

1 pack insurance papers.

1 pocket-book containing protested bills, &c.

1 bond of A. Blizard, cashier of Branch Bank of Tenn. at Athens.

1 bond of James Aikin, pres't Branch Bank of Tenn. at Columbia.

277 1 bond of J. E. Wilcox, cashier of Branch Bank of Tenn. at Clarksville.

1 bond of W. H. Ballew, pres't Branch Bank at Athens.

Bonds of various bank attorneys.

1 pack of papers marked W. B. Sheppard & Co.

1 pack deeds and mortgages.

1 pack official bonds, very important.

2 pocket-books, protested bills, &c.

1 pack pocket-books, protested bills, &c.

1 " " " " " "

1 " " " " " "

1 " books, protested bills, &c.

1 pack marked papers belonging to W. A. Parish & Co.

1 pack cancelled bonds.

Various packs of unissued State and railroad bonds.

1 pack miscellaneous papers.

278 16 (sixteen) State bonds without coupons, marked Fayetteville Turnpike Company.

1 pack miscellaneous papers.

1 State bond, $1,000, belonging to Austin Miller.

6 (six) State bonds, $1,000 each, deposited by J. T. Dunlap, on account of Spencer T. Hunt fund.

134 (one hundred and thirty-four) coupons Edgefield and Kentucky Railroad Company, deposited by W. B. S. Ramsey.

6 (six) Tennessee bonds, deposited by Dr. S. McKizzick.

3 (three) $1,000 bonds, deposited by Dr. S. McKizzick.

6 coupon books.

1 book belonging to comptroller office.

1 tin box marked W. F. Cooper, and containing deeds, receipts, &c.

(This box was delivered to W. F. Cooper August 2, 1865, by order of Gov. Brownlow.)

279 2 large kegs.

1 small bag of coin containing $173.00, marked R. G. Huffman.

Box No. 24. Marked Branch Bank of Tennessee, Somerville, and containing:

1 note-book containing sundry notes, deeds, official bonds of P. B. Glenn and others.

1 note-book containing private papers of R. Y. Longley; the book contains a schedule of debts due him by northern creditors; also an envelope containing $106.00 in good Tennessee money, said to belong to R. W. Bankass; also two (2) certificates of shares, $300.00 each, Southern Pacific Railroad Company, belonging to Caleb C. Longley; also a large quantity of notes.

280 1 pack marked R. Y. Longley, containing three constable receipt-books.

1 note-book containing notes and papers belonging to the Branch Bank of Somerville.

1 small bank account-book, marked P. B. Glenn, containing $90.00 in tens and $4.84 in gold, enclosed in an envelope marked Gen'l P. B. Glenn, bank att'y, special deposit.

1 large cloth-bag containing R. Y. Longley's accounts.

2 packs protested notes.

1 pack marked b'k att'y's receipts.

1 pack belonging to R. Y. Longley and containing sundry papers for sundry persons.

1 pack miscellaneous papers.

(The above articles were in a small tin box in a trunk.)

281 Box No. 25. Marked Bank of Tennessee, Memphis, containing letters, files of old correspondence, and expense accounts.

Box No. 26. Marked Branch Bank of Tennessee, Nashville, Tennessee, (111) containing:

1 wooden box containing an old-fashioned basket, containing old silverware; the box being marked 18, Mr. Ellis.

1 valise containing—

20 (twenty) State bonds deposited by Phœnix Insurance Company.

20 (twenty) State bonds deposited by Etna Insurance Company.

20 (twenty) State bonds deposited by the Hartford Fire Insurance Co.

20 (twenty) State bonds deposited by Home Insurance Co., New York.

282 1 small memorandum book, marked List of Bonds held by the Bank of Tennessee, and containing correspondence of banks in New York with regard to the sale of bonds.

1 pack, marked Col. People's Special, containing Confederate bonds.

1 pack marked 8 bonds, $1,000 each, E. T. & Ga. R. R. Co., endorsed by the State. Hon. G. W. Jones, Fayetteville, Tenn.

15 Confederate bonds 6 per cent. non-tax. Geo. Maury, J. B. Johnson, John A. Fisher.

1 small pack containing 306 coupons, city of Memphis, special deposit Merchants' Bank of New York.

1 pack said to contain $510, State bank-notes, held as collateral
283 security for the payment of Phil. B. Thompson's note for $2,500.00.

1 pack marked Benj. Rucker, jr., containing old pocket-book and papers.

1 envelope, marked B. M. Runnyan, Saint Louis, Mo., said to contain $990.00 in various coupons.

1 envelope marked draft on H. L. Davidson, Shelbyville, for account Sam. M. Allen account.

1 envelope containing note of W. H. Humphreys.

1 envelope said to contain Georgia and South Carolina money, $600.00 collateral from Leher Wm. Ledbetter, esq., care of S. B. Settle, esq., &c.

1 envelope marked N. W. Carter, containing $27.00 in Southern money.

1 envelope, j. peace certificate, containing 8 coupons.

284 1 envelope m'k'd C. D. W. Cook, containing one note.

1 little blue bag containing $400.00 Planters' Bank money and $30.00 in coin, marked Capt. Duffey, Hartsville, Tenn.

1 deed of conveyance, R. E. Hamil and others to John A. Fisher.

2 (two) envelopes marked C. W. Pedue, said to contain $670 in bank notes.

1 old pocket.

10 bonds, $1,000 each, of N. & C. R. R., endorsed by the State. Hon. Geo. W. Jones, Fayetteville, Tenn.

8 (eight) bonds, $1,000 each, E. T. & Ga. R. R. Co., endorsed by the State. Hon. George W. Jones, Fayetteville, Tenn.

1 old pocket-book, Capt. W. H. Robb.

1 small pack marked Deposited in the State Bank of Tennessee, by Thos. E. Taylor for Wm. Mattock.

285 1 pack marked and containing deed from Wm. Holmes, G. C. Torbett.

1 pack said to contain $7,000 in Confederate money, marked J. P. Smith.

1 pack marked notes taken as collateral for the specie account deposited with the Bank of Tennessee. James M. Avent, Chattanooga, March 21, '63.

1 justice peace certificate, containing six coupons.

1 pack of Southern money, marked E. G. Pearl, Atlanta, Ga., said to contain $667.00.

1 pocket-book containing sundry papers belonging to sundry persons.

1 pack containing 2 envelopes pinned together, one said to contain 20 coupons Branch Bank Tennessee, Columbia, Tenn. The other
286 containing Southern money. Sarah E. McRea, Nashville, Tenn., $100.00.

Also 16 coupons fastened to a small piece of parchment.

Also sundry papers.

1 small pack of Confederate money.

1 small pack of Southern money, marked $326.00.

1 pack of Southern money containing, according to marks, $773 Georgia and South Carolina, 1,260 Tenn., 2 Chattanooga 1,687 coupons.
Also 10 (ten) watches.
1 pack marked $19,500 6 per cent. non-tax bonds. G. P. Smith, Nashville, Tenn.
1 large pack containing 18 State bonds, belonging to the school fund, $1,000 each.
32 (thirty-two) bonds of $250.00 each.
10 (ten) State bonds, $1,000 each.
287 This valise also contains a great many special deposits of small Confederate notes.
1 pack marked M. B. Kittrell, Southern Bank, money and notes.

Box No. 27. Large box marked Bank of Tenn., Memphis, No. 4, J. F. Brown, care of John A. Fisher, Augusta, Ga.

1 large forwarding book.
1 individual ledger No. 2, M to Z.
1 " " " A to L.
1 large general ledger checks.
1 small book, items of difference.
1 small tickler, 1862.
1 " " (discount.)
1 " Adams Express Co. receipt.
1 pack depositors' book and cancelled checks.
1 pack blank book.
1 pack blank book.
1 pack depositors' book with notice of notes due inclosed.
288 1 pack blank books.
8 boxes envelopes, printed address different banks.
A large quantity of deposit tickets.
A large quantity general checks.
Sundry items of bank stationery.
1 diploma, Master Mason, Paul Miner.

Box No. 28. Marked Branch Bank of Tennessee, Knoxville, care of J. G. M. Ramsey, Charlottesville, N. C.

1 book certificate of deposits.
1 book description of bills drawn.
1 blank letter-book.
3 blank letter-books, (small).
Several small memorandum-books.
1 pack titles to Georgia lands, belonging to H. T. Cox, Tennessee.
5 (five) empty gold bags variously marked, large quantity of cancelled checks, and a few depositors' books, and a copy of chancery decree
289 Monroe County chamberlain.
1 pack rebel commissary papers.
Sundry small articles of bank stationary.
1 small paper-box containing small padlock of Joseph A. Mabry.

Box No. 29. Marked Branch at Clarksville, and containing 14 large blank-books, ledgers, journals, &c.

Box No. 30. Marks defaced, being one small wooden chest, evidently belonging to the Branch Bank at Columbia, and containing one tin box marked J. C. Rye, cashier, Columbia, Tenn., and containing—

1 pack Confederate $29,500.
1 small memorandum-book, marked Bank of Tennessee, Columbia.
1 pack miscellaneous papers, $38,100 Confederate currency.
290 Various pack's of cancelled checks.
1 pack of accounts due.
1 pack of checks not cancelled.
Books containing notes, bills of exchange, &c.
1 receipt-book.
1 note-book containing sundry notes, &c.
1 interest-book.
1 individual ledger. Various blank books.

Box No. 31. Marked Sparta, Tenn., and containing—

1 morocco note-book, and containing notes.
1 pack of school lands notes.
1 small pack of judgments, marked Jas. G. Mitchell, cashier Branch Bank, Sparta.
1 journal.
1 discount-book.
1 credit-book.
1 general ledger.
291 1 individual ledger.
1 state of the bank.
Various bank books.
1 pack protested notes, &c.

Box No. 32. Marked Branch Bank of Tennessee, Knoxville, Tenn., containing—

1 individual ledger.
1 general ledger.
1 domestic exchange.
1 record book.
1 general scrat'her.
1 discount book.
1 individual scratcher.
1 state of the bank.
1 check record.
Various small bank books.

Box No. 33. Marked Branch Bank at Clarksville, and contains—

2 individual ledgers.
292 1 letter book.

2 state of the bank.
1 day book.
1 register.
1 minutes of board.
1 notes paid.
1 state of the bank.
1 minutes.
1 foreign collector's book.
2 scratchers.
1 letter book.
1 check book.
Various small bank books.

Box No. 34. Marked Branch Bank of Tennessee, Nashville, Tenn., and containing—

2 journals.
1 exchange credit book.
2 ledgers.
1 record.
1 discount credit book.
293 1 check book.
1 exchange book.
1 teller's daily statement.
1 cash deposit.
1 individual checks.
1 collection book.
1 individual depositors' book.
1 tickler.
1 check book.
1 teller's checks.
Sundry small bank books.
1 pack small memorandum books, Memphis branch.
1 ditto Bank of Tennessee.
1 ditto Memphis branch.
3 packs memorandum books.

Box No. 35. Marked Bank of Tennessee, Nashville.

1 letter book containing various receipts for money paid into the bank.
294 1 chest key.
1 state of bank.
1 record.
1 book drafts.
1 teller's daily statement, Memphis branch.
1 book 3rd Regiment Tennessee Volunteers.
1 book notes & bills in suit.
1 book notes and bills in suit various counties.
1 cash book, Trenton branch.
1 letter book, Trenton branch.
1 book discounted notes.

1 cash book.

Various small memorandum books.

1 pack 66 Tennessee internal improvement bonds in wrapper, marked Jessee Thomas, surveyor of the port, deposited to the governor in
295 trust to the State, to indemnify reprisals, out of a wrapper marked 66 bonds received of Jesse Thomas, and held for account of S. R. Cockrill, C. S. receiver, 65 being $1,000 each, one of $1,666⅔.

1 pack marked 50 bonds, Merchants' Bank, and containing 50 bonds $1,000 each.

1 pack marked and containing 9 Tennessee bonds, $1,000 each, marked Northern Bank of Tennessee.

1 pack marked and containing two (2) Tennessee bonds, Bank of Paris, and sundry papers.

1 pack marked 50 bonds, Bank of Memphis, and containing 50 bonds of the Nashville and Chattanooga Railroad, $1,000 each, and sundry papers.

1 pack marked 4 bonds, Bank of Nashville, and containing 4 bonds State of Tennessee, $1,000 each, and sundry papers.

296 1 pack marked $40,000, Somerville branch, and containing $15,000 good old Tennessee money mostly, and $25,000 new issue Tennessee money.

1 pack marked one bond, Bank of Dandridge, and containing one bond of Nashville and Chattanooga Railroad Company & sundry papers.

1 pack marked and containing 34 bonds, Nashville and Chattanooga Railroad bonds, City Bank.

1 pack marked 50 bonds belonging to Commercial Bank of Memphis, and containing 50 bonds Nashville and Chattanooga Railroad.

1 pack marked and containing 16 bonds (15 city of Memphis and 1 Nashville and Chattanooga Railroad), belonging to Traders' Bank.

297 1 pack Confederate money, $125,000.

2 packs marked general ledger checks.

1 pack marked special deposit No. 55, 74, 75, 77, 86, 98, 108, 110, 111, 116, 117, 119, 120, Joseph Lenow, C. Hale, cashier, and containing Confederate bonds notes, belonging to Northern citizens and various other persons.

1 pack marked $6,000, C. S. bond.

1 pack marked papers of the Farmers' Bank of the Bank of Knoxville, the bonds having been withdrawn.

1 pack marked $380, mutilated notes.

1 pack cancelled checks, Exchange Bank.

1 pack cancelled coupons.

1 " " " 313.

1 " " " 712.

1 " " " 1,321.

1 " marked $517.85, mutilated bank notes.

298 1 pack marked general checks from 1st January to 1st April, 1862.

1 pack of coupons off of Tennessee bonds, 555 of $30 each.

1 pack marked $11,500, Confederate bonds.

1 pack marked 8 cancelled capital bonds.

1 pack marked 617 cancelled coupons.

1 " " 574 " "
1 " " $89 in mutilated notes.
1 " " 16 bonds, Southern Bank of Tennessee, and containing 16 bonds $1,000 each, and sundry papers.
1 pack marked individual checks from A to L.
1 pack marked 253 cancelled coupons.
1 pack marked H. Halays' private papers.
1 pack marked $78.45 mutilated notes.
2 packs cancelled capitol bonds.
1 pack cancelled Bank of the Union bonds and notes containing—
299 6 Tennessee bonds, $1,000 each, and sundry papers.
1 pack old papers.
7 (seven) packs letters.
1 pack $3,000 C. S. bonds.
1 pack marked 3 bonds Bank of Middle Tennessee and containing 2 Tennessee bonds, $1,000 each.
1 pack marked $1,250, and sundry papers.
1 pack marked $176, Farmers and Merchants' Bank notes, this day received from James Paul, Memphis, this having been charged him in December, 1853, and now credited him and charged Farmers and Merchants' Bank, of Memphis, and that account with existing balance closed by profit and loss.

H. L. CLAIBORNE.

OCTOBER 27, 1858.

300 1 pack, marked Branch Bank of Tenn., Somerville, Tenn., & containing—
1 small pack Branch Bank, Tenn., Somerville, Tenn., $20,000 Somerville issue, W. A. Williams, John B. Stanley, James A. Heaston, and containing $20,000 in Tennessee Bank notes.
1 small pack Somerville issue, $20,000; W. A. Williams, Joseph A. Hale from R. Cocke, supposed to contain $20,000 in Tennessee notes, the seal not being broken.
1 pack individual checks from M to Z.
1 pack 464 cancelled coupons.
1 pack expense vouchers from April, 1862, to April, 1863, Joseph Lenow, president.
1 pack cancelled coupons.
1 pack letters.
1 pack protested notes and bills.
4 packs letters.
301 1 bag of keys.
1 bag coupons, $7,200, belonging to Memphis Branch Bank of Tennessee.
1 pack cancelled capitol Tenn. bonds.
4 packs marked C. S. currency, $10,000.
1 leather pocket-book containing various valuable papers.
1 small memorandum book, Bank of Tenn., discounted notes.
1 leather pocket-book containing notes and other papers.
1 small book marked Branch Bank of Tennessee, special deposits.
1 pack marked checks.

1 pack of accounts.
1 pack of cancelled capitol bonds.
1 pack of cancelled county bonds.
1 pack envelopes containing two certificates of deposit in favor of R. H. Short & Co. for $7,860 on the Citizens' Bank of Louisiana, also
302 $1,000 in Mississippi treasury notes, and sundry other papers.
1 ledger.
1 book notes & bills in suit.
1 book Southern Express Co. receipts.
1 large lot of miscellaneous and loose paper.

Box No. 36. Somerville Branch Bank of Tennessee.

1 general ledger.
1 journal.
1 checks.
1 discount.
2 individual ledgers.
1 general scratcher.
1 note for collection.
1 exchange credit book.
1 statement, bank.
2 check books.
1 notes paid.
1 bill of exchange.
1 letter book.
303 2 bank-note registers.
1 discount credit book.
1 deposit book.
1 individual ledger.
1 individual checks.

Box No. 37. Marked Chattanooga, other marks not legible, containing—

1 valise, marked J. E. Wilcox, Clarksville, Tenn., and contains—
Various notes and papers.
1 general ledger.
1 discount book.
1 individual ledger.
1 general scratcher.
1 individual scrat'her.
1 notes for collection.
1 collection forwarded.
2 journals.
2 letter books.
1 domestic exchange.
304 1 pack of individual and general checks.
Various small books and papers.

Box No. 38. Marked Bank of Tennessee, Memphis; J. F. Brown, care W. A. Ramsey & Co., Augusta, and contains—

1 discount and collection tickler.

2 certificates of deposit.
1 record.
1 general ledger of checks.
1 checks.
1 notorial register, No. 1.
1 discount book, No. 2.
1 individual ledger, No. 3.
1 individual scrat'her, No. 2.
1 cash deposit.
1 teller's checks.
1 collector's book.
1 domestic exchange.
1 individual ledger, No. 3.
1 general ledger, No. 2.
305 1 general scratcher, No. 2.
1 individual ledger balance.
1 bank book.
1 individual checks.
1 cancelling hammer.
Various loose memorandums.

Box No. 39. Marked J. C. Rye, Columbia, Tenn., and containing—

1 domestic exchange.
1 general ledger.
1 scratcher.
1 discount.
1 credit book.
1 individual ledger.
1 scratcher.
1 discount ledger.
1 notes and bills in suit.
1 notes, bills, & drafts for collection.
1 state of the bank.
1 cash book.
1 record.
306 1 individual and general checks.
1 notes and bills forwarded.
1 discount tickler.
1 individual and general checks.
1 exchange tickler.
1 memorandum book.

(Which objected by plaintiff and excluded by court; to which defendant excepted.)

The defendant then offered to read the deposition of Thomas Marr in the case of State of Tennessee vs. Thomas Sneed et als. (which the clerk will copy from record); was excepted to as irrelevant and incompetent, which objection was sustained by the court, and defendant excepts.

No exception was taken to Thomas Marr's evidence, because it
307 was taken in another case; because it was agreed it might be used as evidence subject to exceptions, incompetency, &c.

Deposition of Thos. S. Marr.

Q. Will you please state what the notes purporting to be issued by the Bank of Tennessee, called the "new issue," and issued and signed after 6th of May, 1861, signed by G. C. Torbett, president, were worth in the market at the time of the assignment made by the Bank of Tennessee to Samuel Watson, trustee, and since that time?

Ans. Up to the adoption of the State constitution, known as the "Radical or Brownlow constitution," in the year , there was no dif-
308 ference in the issues of the Bank of Tennessee notes. They were bought and sold without regard to dates. A few months after the adoption of said constitution dealers began to make a distinction, rejecting all notes signed G. C. Torbett, and all notes dated subsequent to May, 1861, as "new issue." These notes ("new issue") gradually went down in the market until they were unsalable, and were nominally worth one cent. in the dollar. After the adoption of the present State constitution in , they advanced from one cent to forty-five cents in the dollar, and are now worth in the market from thirty-three to forty cents in the dollar.

THOS. S. MARR.

309 Sworn to and subscribed before me December 30th, 1872.

ISAAC LITTON,
Sp'l Commissioner.

The defendant then offered to read the deposition of W. M. Duncan, but upon objection of plaintiff to its relavancy and competency was excluded by the court, to which defendant excepts.

The defendant then read the depositions of Jo. W. Allen, H. L. Claiborn, H. G. Scovill, P. H. Archey, M. B. Touy, M. B. Wood, Harrison Smith, and Ashbury Brown, which are as follows:

Deposition of J. W. Allen.

310 Ques. 1st (by def'd't). Please read a statement dated Nashville, January 30, 1866, signed "Jos. W. Allen," "H. L. Claiborn," addressed to "Hon. J. R. Hood, chairman committee on banks," which appears in "appendix, 1865–'6," to the journals of the general assembly of Tennessee for those years, and state whether or not you are the Jos. W. Allen making such statement, and whether you had examined the books of the bank, and whether such statement is true, as then appeared from the bank books.

Ans. I am the Jos. W. Allen whose name appears with that of H. L. Claiborn to the letter addressed to J. R. Hood in the appendix mentioned in this question, and which letter is on pages 239 & 240 of the
311 said appendix; the statements in said letter I believed to be true at that time, and do still.

Quest. 2nd. State what position H. L. Claiborn held in the Bank of Tennessee; state, also, whether or not you have been engaged in banking business for many years, and an agent for the Bank of Tennessee for a long time.

Ans. H. L. Claiborn was book-keeper in the Bank of Tennessee for a long time. I was agent in New Orleans for the Bank of Tennessee, about twenty years, and was cashier of the Union Bank of Tennessee, in Nashville, about eleven years.

JOS. W. ALLEN.

312 Sworn to and subscribed before me, Feb'y 26, 1881.

WM. SMITH,
D. C. & M.

Deposition of H. L. Claiborn.

Ques. 1. (by defendant). Please state what offices you have filled in the Bank of Tennessee, and what connection you had with the Bank of Tennessee before and during the late civil war.

State when the Bank of Tennessee was removed from Nashville, and its movements until seized by the Federals in 1865.

State whether the legitimate business in the discount of bills and notes increased or decreased after the war.

313 State the amount of bills and notes discounted by the bank May, 1861, and the amount January, 1862.

State whether the circulation of the Bank of Tennessee increased or decreased after the war began.

State the amount of notes in circulation by the Bank of Tennessee 1st May, 1861, and the amount of circulation 1st January, 1862.

State the aggregate amount of the checks of the military board upon the bank for the war of the rebellion, and in detail the amount check' for each month.

State amount due Bank of Tennessee from the rebel military board 1st January, 1862.

State amount of Tennessee war bonds received by the bank from
314 the military board, and the times and amounts of the bonds so received.

State whether the Tennessee military board had any deposit or funds in the Bank of Tenn., upon which to check except these war bonds.

State the amounts and the times when the notes now known as "Torbett," or "new issue" of the Bank of Tennessee were signed by Torbett and put in circulation, as appears from the books of the bank.

State whether the old issue of bank in use before June, 1861, was not amply sufficient to carry on the business of the Bank of Tennessee, as transacted before the war.

State what amount of Confederate securities were part of the
315 assets of the Bank of Tennessee at the time of its seizure in 1869, and the amount of Tennessee war bonds.

State whether the Union or Planter's Bank of Tennessee issued any new bank bills after the war commenced.

State what has been done with the bank-note plates upon which the bills of the Bank of Tennessee were made, and who had those plates in custody during and since the war.

Was there any new money made or printed by the Bank of Tennessee after the war began, at New Orleans, or elsewhere, and upon what plates and how made?

You will please answer from memory and by reference to the bank books or memorandums from the books.

316 Answer. I was general bookkeeper of the Bank of Tennessee for several years before and during the war. I am unable to answer the remaining part of the question until I shall have had time to examine papers.

The further taking of this deposition is continued to Wednesday morning, at 10 o'clock a. m., Dec. 29, 1880.

WM. SMITH, *D. C. & M.*

The Bank of Tennessee was removed from Nashville on Sunday, when the news of the fall of Fort Donalson was learned. I think it was the 16th of February, 1862. I did not go with the other bank officers, being on military duty. I have heard that the bank books, &c., were taken to Columbia, Memphis, Chattanooga, Marietta, Griffin, and lastly

317 to Greensboro' and Augusta, Georgia. At Augusta the effects of the bank were seized by the United States, General Upton commanding, I think in May, 1865 I was then in Augusta sick. (I am now suffering from the effects of a fall last night; am scarcely able to write, and must ask for a further continuance in taking this deposition).

The further taking of this deposition is continued to Thursday morning, Dec. 30th, 1880.

WM. SMITH, *D. C. & M.*

DEC. 29, 1880.

I am now scarcely able to resume the answering of these interrogatories. Will do the best I can. I am physically unable to handle the books of the Bank of Tennessee, even if I knew where they are. I have,

318 I know not how often, answered like questions to legislat*ure* committees, and in law suits. I had no connection whatever with the Bank of Tennessee after the war. While I was connected with the bank I was general bookkeeper of the mother bank at Nashville. The various branches of the Bank of Tennessee had their officers and kept their books at the respective branches. I can only answer as to the increase or decrease of the bills and notes by saying that there is shown to me what purports to be a copy of a deposition given by me some years ago, showing a decrease of $443,884.22 between May 1st, 1861, and January 1st, 1862. It may be correct. I think it is correct. I do not know. I have

319 not the means at hand to tell what amount of bills and notes were discounted by the bank in May, 1861, and the amount in May, 1862. As to the circulation of the bank I can only say that I have examined a copy of the printed report in the case of the State of Tennessee and Samuel Watson, trustee, against the president and directors of the Bank of Tennessee and others, printed in 1872 (indebted to Hon. Wiltze, of the legislature, for use of same). I see Exhibits B and C, in that report; presume they are correct (not responsible for typographical errors). That report says that the circulation of the bank in 1861 was a total of $1,469,299, and that the mother bank issued in 1862 $177,000. I presume that is correct (not responsible for typographical errors).

320 Exhibit C, in that report, shows that Bank of Tennessee notes were

issued after May 6th, 1861, amounting to $1,633,420. I suppose it to be correct (not responsible for typographical errors).

I cannot give the aggregate amount of the checks of the "military board." I have no data in my possession to give the same. I know, however, that I have answered heretofore in other depositions, when I had the data at command, which I have not now. I gave a full statement of the account of the "military board." I cannot remember the amount of Tennessee war bonds received by the bank from the "military board." I
321 cannot tell, but think I have answered in former depositions; I know not how often. I think the "military board" made deposits in the bank and checked against said deposits.

I cannot state the times and amounts when the notes now known as Torbett or new issue were signed and put in circulation. I do not know of my own knowledge what is meant by "new issue." I do not know when Torbett signed them; never saw him sign a Bank of Tennessee note that I can now recollect. As a clerk in the bank, my duty was simply to enter the bank notes on the books when the cashier handed me the memorandums.

There was a State officer known as "supervisor of banks," whose duty was to attend to the bank notes issued by the banks.

You ask me to state whether the old issue in use before June,
322 1861, was not amply sufficient to carry on the business of the Bank of Tennessee as transacted before the war. I presume the officers of the bank did not think the "old issue" was sufficient, or they would not have issued more notes; but I was neither president, cashier, or a director in the bank, and it was not my business to know. I do not know what amount of "Confederate securities" were part of the assets of the Bank of Tennessee at the time of its seizure (I never knew anything about its being seized in 1869); presume you mean its seizure by federal authority in 1865; do not know what they were in 1865; nor do I know what the amount of Tennessee war bonds was. I have no memorandums & no books. I never had any official connection with the Union and
323 Planters' banks of Tennessee; do not know whether they issued any new bank bills or not after the war commenced. I have seen many of the bills or notes of both of those banks; do not know when they were issued.

As to the bank-note plates of the Bank of Tennessee I do not remember ever to have seen them. I think they were engraved in New York and Philadelphia, perhaps elsewhere; I do not know; the officers of the bank (president and cashier) attended to that; I had nothing to do with it. I remember that when bank-note plates were engraved they were always kept by the engravers, and that engravers furnished the bank with impressions as they were ordered by the bank officers (as president
324 or cashier). I do not know what became of the plates, or where they are, nor do I know who had custody of them outside of the engravers, as before stated.

There were some fractional or change notes printed at New Orleans. I do not remember when. As I remember now, they were not engraved. I have seen the notes (fractional). I do not know whether this was before or after the war began; my impression is that it was after Fort Sumpter fell.

The further taking of depositions in this cause is continued to Dec. 30, 1880.

WM. SMITH, *D. C. & M.*

Did the Bank of Tennessee continue to do a regular banking business after May, 1861, drawing bills and discounting notes, &c., and was not the new issue and old issue paid out over the counter indiscriminately?

Ans. The Bank of Tennessee continued to do a regular banking
325 business after May, 1861. I know no difference between old and new issue. The bank issued her notes in the regular way; they were regularly entered on the books of the bank, and were paid out by the teller or received by him from depositors as presented.

Re-examination:

Please state whether or not the new issue was not all issued in the summer and fall of 1861, and will not the books of the bank show the dates when this money was issued or handed to teller of the bank for circulation?

Ans. I have already stated that I do not know any difference be-
326 tween the old and new issue of the Bank of Tennessee; the notes, signed by G. C. Torbett, president, like the notes signed by all other presidents of the bank, were entered on the books of the bank at the time they were handed to the teller or sent to the branches of the bank. I cannot tell when they were paid out, or to whom.

Further this deponent sayeth not.

H. L. CLAIBORN.

Subscribed and sworn to before me Dec. 30th, 1880.

WM. SMITH, *D. C. & M.*

H. G. Scovil's deposition.

Ques. 1. Were you or not one of the persons who took an inventory of the assets of the Bank of Tennessee in 1865, after its return to Ten-
327 nessee; were you or not acting as a director of said bank in taking an inventory of the assets, and please state, as near as you can, the amount of Tennessee war bonds on hand as part of said assets; also the amount of Confederate State' securities.

Ans. I was one of the directors of the State Bank of Tennessee who, with others, took an inventory of the assets of the Bank of Tennessee and branches, after the return of said bank assets to Nashville, Tennessee; as to the exact date I cannot say in the absence of the records and books of said bank and branches.

As one of the directors of said bank I aided in taking an inven-
328 tory of said assets. It is my impression, and I think the records of said bank will corroborate my statement, that I took an account of, filed and packed in a large box, and labelled said box as containing about six millions of Confederate State war bonds ($6,000,000).

In the absence of said record and book I say "about," speaking of the amount.

This amount was in excess of all the miscellaneous Southern moneys, the amount of which I cannot state from memory.

As I have learned from Mr. Robert Ewing, clerk and master, that all

the books, or nearly all, are in the vaults of said bank building in Nashville, Tennessee, and such were his pressing engagements during
329 the session of his court, that he said it would not be convenient to show me the books and records of said bank short of three or four days.

Nashville, Feb. 11, 1881.

H. G. SCOVEL.

Subscribed and sworn to before me this Feb'y 11, 1881.

WM. SMITH, *D. C. & M.*

P. H. Archey's deposition.

Ques. 1. State your present residence, and where you resided in 1861 and 1862, and what position or employment did you hold in 1862, before and the time of the evacuation of Nashville by the Confederate forces in 1862.

330 State what you may know about the assets, or any part of the assets or effects of the bank of Tennessee being at Huntsville, Alabama, after the removal of the bank from Nashville. If you saw any of the notes or effects of the bank, state what amount, and where they were, and under whose control.

State whether or not you saw any person at Huntsville signing bank notes such as are now known as Torbett issue, or new issue of the Bank of Tennessee; state who this person was, and what office he held; state how many days you saw him engaged in signing these bank bills, and whether he signed them in large or small quantities, and what he said about making and signing these bank bills.

331 Ans. I reside in Nashville, Tennessee, at present, and has been my home since 1844, Dec. in 1860–1861 I was a messenger in the Southern Express Company from Nashville to Decatur, Alabama, and handled daily large sums of money.

Sometime in February, 1862, Fort Donelson fell, and was telegraphed to come home as soon as possible. I arrived; everything in confusion; was called on to receipt for a very large amount of money belonging to the State Bank, Planters' Bank, Union Bank, W. B. Sheppard Bank, and money belonging to various citizens to be sent through the Southern Express Company. I consented to go, and did go; turned my money
332 over to the Memphis messenger at Huntsville, Alabama, and remained two days for orders. While there I stopped at the Huntsville Hotel, opposite corner of big spring, and met Mr. David Love, a resident of Nashville, Tennessee, at the hotel. I went with him to his room, and there saw a large quantity of Tennessee issue unsigned, and said Love was signing Torbett and Fisher's name to said bank bills by thousands; could not say the amount, as I did not count it, but it was a big amount; saw nothing less than one hundred dollar bills signed. I asked him this question, "How do you come to sign this money?" He said, "All was confusion, and we must have money, and I am filling
333 them out." After this, I returned to Nashville, and was held by the Federal forces until May 14th, 1863. I at this time hold the order for my ejectment beyond their lines at Chattanooga. I entered the quartermaster's department and located at Marietta, Georgia. The Bank

of Tennessee was there and Colonel Torbett. After the battle of Missionary Ridge the bank was moved to Griffin, Georgia, and John Fisher was with it, as I had frequent business with him; never knew David Love to be employed in or by the Bank of Tennessee in any capacity whatever. Said David Love had been the circuit court clerk of Davidson County, Tennessee.

334 Ques. 2nd. State whether the money that Love was signing was in sheets, and whether he cut the sheets.

Was the money kept by Love in boxes or on a table; if on a table was it a large or small table; was the table full or not; was the money in large bundles or packages or small bundles or packages?

Ans. He was signing in sheets, and had piles of it cut; all I saw was on a large table; saw no boxes, only a valise and trunk; money cut was all in piles over the table.

P. H. ARCHEY.

M. B. Touey's deposition.

335 Ques. 1st (by def't). You will please state whether or not you were a soldier of the late rebellion of the Confederate States against the United States; and, if so, in what regiment did you serve, and was or not the regiment paid in Virginia; and, if so, was it paid in bank bills or not; if in bank bills, upon what bank were the bills, and were any of the bank bills so paid new bills?

Ans. I was a soldier in the 1st Tennessee Regiment, and was on duty the first year of the war in Virginia, and received my first pay in full of year 1861. My pay was in Bank of Tennessee bills, of what de-
336 nomination and issue I do not now recollect; I think the money was in new bank bills.

MARCUS B. TOUEY.

M. B. Wood's deposition.

Ques. 1. Please state whether or not you were in the army of the rebellion against the United States in 1861; and, if so, state to what regiment did you belong and what office did you hold, if any. State also when you were first paid for your service in the rebel forces, and where paid, as near as you can remember, and by whom paid. Give the name of the paymaster, if you can remember. Was the paymaster a Tennessean or not, to best of your present recollection and impressions?
337 State what kind money you were paid in, and the amount. Was it in bank bills or not, and upon what bank? Were the bills new or old? What were their appearance? Had they been fold' or in use before or bran new? From your best recollection was the money paid you old bills or what is now called new issue of the Bank of Tennsssee?

(Objected to by plaintiff because irrelevant, the payment of money to soldiers having no reference to its issuance.)

Ans. I was in the war of the rebellion in 1861, and belonged to 16th Regiment, and Captain York's company. I held the office of
338 second lieutenant while in that regiment and company. I was first paid for my services about November, 1861, at Lynchburg, Vir-

ginia, as near as I can now remember. I was paid by a Tennessee paymaster, but don't recollect his name; I was paid in bank bills; think most of them were twenty dollar bills. They were all new bills. I got between two and three hundred dollars. This was the first money I had received since I had been out. My recollection is they were new and had never been folded, and was bran new money. Said money was bills on the Bank of Tennessee. I have before stated that it was new money.

339 Ques. 2nd. State whether or not you were absent or in camp when the 16th Regiment was paid at Camp Trousdale, Tennessee, and whether you learned upon your return that your regiment had been paid in your absence. State whether or not you saw money in the possession of the men of the command at Camp Trousdale after your return; and, if so, state whether the bills were new or old issue of the Bank of Tennessee that the men had.

Ans. I was absent when the regiment was paid off at Camp Trousdale, and on my return learned that it had been paid off. I saw money in the possession of the men of the command at Camp Trousdale after I

340 returned. They were new bills, in the possession of the men, of the Bank of Tennessee, and the men were exhibiting and showing them as new money.

(Plaintiff objects to the foregoing question and answer because irrelevant and *heresay* testimony.)

Ques. 3rd. Please state as near as you can remember the time when the 16th Regiment went to Camp Trousdale and the time it left there for Virginia.

Ans. I think it went there in May, 1861, and left in July, 1861, as near as I can remember.

Cross-examined:

341 Ques. Were all the members of your company paid off at Lynchburg when you were?

Ans. There was no person paid off there but me, and I was on my way home under a furlough.

Ques. Was all the money you received issued by the same bank? Do you remember what bank it was, who signed the bills as president and cashier of the bank, or the number or date of the bills?

Ans. I don't know whether all the money was issued by the same bank or not; I don't know what bank it was; don't know who signed the bills as president and cashier of the bank or the number or date of the bills.

342 Ques. Do you remember the color of the bills, or whether they were all of the same color?

Ans. Can't tell anything about the color of the bills.

Ques. Do you know that it was all Tennessee money?

Ans. I can't say that it was all Tennessee money.

Ques. Do you know of your own knowledge where the soldiers in Camp Trousdale got the money you saw them with there, or whether they were paid off there or not?

Ans. I don't know of my own knowledge; I only had their say-

343 so about it.

Re-examined:

Ques. Were you or not in 1861 sufficiently well acquainted with money

to know the bills of the Union and Planters' Bank bill; are you not a fair scholar; can you read and write pretty well?

Ans. I was sufficiently well acquainted with money to tell the difference in Bank of Tennessee, Union and Planters' Bank bills if I had noticed. I can read & write.

Ques. Were the bills, or most of them, received by you bills of the Bank of Tennessee? Is your impression and recollection distinct
344 on that point, or is it simply that the bills was new money on Tennessee banks?

Ans. My recollection is that it was Tennessee money. It was new money, but I cannot say on what banks it was.

M. B. WOOD.

Subscribed and sworn to before me Dec'r 23, 1880.

J. C. BILES, *C. & M.*,
By A. B. RAMSEY, *D. C.*

Harrison Smith's deposition.

Ques. 1. State whether or not you were engaged in the late civil war and rebellion against the United States; and if so, in what regiment or company did you serve? State, to the best of your recollection,
345 about the time the 16th Tennessee rebel regiment arrived at the camp of instruction called Camp Trousdale, and when it left there for Virginia; about what time was the regiment first paid, and in what kind of money; if paid in bank bills, upon what bank were the bills; were the bills old or new bills; what was said by the soldiers, at the time of such payment (if anything), about the money being old or new, good or bad; was it called new or old money?

(Objected to by plaintiff, because irrelevant, and the payment of money to the soldiers has no reference or connection with its issuance; and to so much of the question as asks for the soldiers said of the money,
346 because hearsay testimony.)

Ans. I was engaged in the late civil war of the rebellion, in the 16th Tennessee Regiment and Captain Dodrald's company. We arrived at Camp Trousdale in April or May, 1861, don't remember which, and left for Virginia in July, as near as I remember. The regiment was first paid a short time before we left, I think in July, in new bank notes, Tennessee money. They were paid in new bank bills, but not bills on the Union or Planters' Bank; the bills were on some bank of Tennessee, but don't know what bank. We talked of it in our mess, whether it was
347 good or not, and Tom North said it was new money and he reckoned it was good.

Ques. 2nd. Was the 16th Regiment paid for one, two, or three months' service at Camp Trousdale; do you remember the time for which it was first paid?

Ans. I reckon we were paid for two months. I was at that time 2nd sergeant, but was acting as orderly sergeant. The payment was made some time in July, I think.

Cross-examination:

Ques. Did you receive all your pay in the same kind of money?

Ans. My recollection is that I did.

348 Ques. Were all the company paid in the same kind of money?

Ans. My mess all had the same kind of money, but I can't say that the company were all paid in the same kind, though I saw several of the soldiers with the same kind; this my recollection.

Ques. Do you remember the date and number of any of the bills received, or who signed them as president and cashier of the bank?

Ans. No, sir; I can't recollect the dates or who signed it as president and cashier; only recollect it was new money.

349 Ques. Do you remember anything about the money besides that it was new Tennessee money?

Ans. I think in some of it the backs were colored. This is all I remember about it, except that it was new Tennessee money.

Ques. Do you remember who paid it to you?

Ans. The paymaster at Camp Trousdale; don't know his name.

HARRISON SMITH.

Subscribed and sworn to before me Dec. 24, 1880.

J. C. BILES, *C. & M.*,
By A. B. RAMSEY, *D. C.*

350 *Asberry Brown's deposition.*

Ques. 1. State whether or not you served in army of the late rebellion against the United States; and, if so, in what confederate regiment did you serve? Was you a soldier or officer? About what time did the 16th Tennessee rebel regiment organize at Camp Trousdale, and about what time did it leave there for Virginia? When and where was this regiment first paid, and how many months' pay was the first payment? In what kind of money was it first paid? If paid in bank bills were the bills new or old bills; had the bills ever been used or folded? Did the money
351 make any noise when folded? Did the soldiers at the time of such payment say anything about the money being new or old issue, new or old money, good or bad money? State what was then said by the soldiers about the money, if anything.

(Plaintiff objected to the whole question because irrelevant, and also to so much of it as calls for what the soldiers said the money, because hearsay.)

Ans. I served in the late rebellion in the 16th Tennessee Regiment. I was a soldier in said regiment. The 16th Tennessee Regiment organized at Camp Trousdale about May, 1861, I think, and left about the
352 last of July. It was first paid at Camp Trousdale, and for two months is my recollection. It was paid in Tennessee money. It was paid in new bank bills. The bills had never been folded, and rattled when folded, I think. I don't recollect that the soldiers said anything about the money except that it was good, new money.

Cross-examined:

Ques. Do you remember who signed the bills as president and cashier of the bank, or what bank issued the bills, or the number, amount, or date of the bills?

Ans. I don't know.

353, 354 Ques. Do you remember anything about the money except that it was new Tennessee money?

Ans. No, sir; only that it was new Tennessee money.

his
ASBERRY + BROWN.
mark.

Subscribed and sworn to before me Dec. 24, 1880.

J. C. BILES, C. & M.,
B' A. B. RAMSEY, *D. C.*

The defendant then offered and read by consent the bank record marked "Exhibit No. 1."

355

EXHIBIT No. 1.

Bank note account—Nashville.

				Dr.	Cr.
1861.					
Feb'ry	20.	Notes burned		3, 839 "	
Aug.	28.	Bal. to page 894		790, 142	
1861.					
Jan.	1.	Bal. from led. 5, fol. 19			566, 221 "
May	16.	100 sh. 50 & 100, 401c 500		30, 000	
		100 " " " " 301c 400		30, 000	
					60, 000 "
	23.	154 " 1112, 10001c 10, 155		770	
		1298 " 1c 1298		6, 490	
		100 " 1201c 1300		500	
					7, 760 "
	25.	200 " 511 600 }			
		3601 3700 }			1, 000 "
	27.	200 " 1112, 3001c 3200			1, 000 "
	28.	200 " " 1501c 1600 }			
		3201c 3300 }			1, 000 "
	30.	1112 1001c 1100 }			
		1601 1700 }			1, 500 "
		2401 2500 }			
June	1.	300 sh. 1112, $1701 2000			1. 500 "
	3.	400 " w " 2201c 2400 }			
		1101 1200 }			2, 500 "
		2501 2700 }			
	4.	200 " 1112, 2701 2900			1, 000 "
	6.	300 " w 1401c 1500 }			
		33013, 400 }			1, 500 "
		3901 4000 }			
356	June	7. 200 sh. 1112, 2101, 2200, 1301, 1400			1, 000 "
	8.	200 sh. 1112, 3801, 2900, 2001, 2100			1, 000 "
	10.	200 " " 3401, 3500, 3701, 3800			1, 000 "
	12.	100 " " 901c 1, 000			500 "
	13.	200 " " 401, 500, 3501c 3600			1, 000 "
	14.	100 " " 701c 800			500 "
	15.	100 " " 1c 100			500 "
	17.	100 " " 201c 300			500 "
	20.	500 " " 101c, 200, 301, 400 }			
		2901c 3000, 601c, 700, 801, 900 }			2, 500 "
	22.	100 " 1112, $4001, 4100			500 "
	25.	300 " " 4401c, 4600, 4801c, 4900			1, 500 "
	27.	200 " " 4301c, 4400, 4901 5000			1, 000 "
	28.	100 " " 4201c, 4300			500 "
July	1.	100 " " 4701c, 4800			500 "
	13.	100 " 2701c, 2800			2, 000 "
	23.	100 " 4801c, 4200		500	
		400 " 3s 2201c, 2600		8, 000	
		200 " 5s 2801c, 3000		4, 000	
		1, 2, 3, 15701c, 15800		700	
		15901, 16200		2, 100	
					15, 300 "
	29.	100 " 1 & 2s 4601, 4700			500 "
Aug.	6.	100 " 1.2.3s $15801c, 15900		700	
		100 " 5s 2001c, 2601		2, 000	
					2, 700 "
	7.	100 " 20s 2501c, 2601			8, 000 "
	8.	100 " 20s 2401c, 2500		8, 000	
		100 " 20s 3201c, 3300		8, 000	
					16, 000 "
	9.	100 " 20s 2201c, 2300			8, 000 "
	13.	200 " 5s 3001c, 3200,			4, 000 "
	20.	200 " 20s 1201c, 1400		16, 000	
		100 " 20s 2601c, 2700		8, 000	
					2, 400 "
	21.	200 " 20s 1401c, 1600			16, 000 "

357	22.	200 sh. 20s., 1601c, 1800			16,000
	24.	100 " 20s., 1801c, 1900			8,000
	26.	200 " 20s., 1901c			16,000
				$793,981 00	$793,981 00

Bank-note account. (Page 893.)

				Dr.	Cr.
1861.					
Feb'ry	23.	To		23,747 "	
Oct.	14.	" Trenton, burned		8,000 "	
	18.	" Athens		5 "	
1863.					
Jan.	14.	" Br. b'k-notes, burned		4,259 "	

Cr.

1861.					
Jan.	1.	By bal. from led. 5, fol. 5			2,327,716
Feb.	20.	Br. at Memphis	10,000		
		" Athens	10,000		
		" Knoxville	18,000		
		" Trenton	4,500		
		" Clarksville	10,000		
		" Columbia	10,000		
		" Rogersville	10,000		
					72,500
Apl.	6.	" Clarksville			2,500
July	20.	" Knoxville			26,200
Aug.	8.	" Shelbyville			6,000
	23.	" Knoxville			8,000
	28.	" ditto			20,000
Sep.	19.	" Memphis			40,000
358	1861.				
Sep.	28.	By br. at Memphis			164,500
	30.	" Memphis & Columbia			131,000
Oct.	3.	" Athens			8,000
	4.	" Somerville	10,000		
		" Athens	40,000		
		" Knoxville	10,000		
					60,000
	9.	" Trenton			
	12.	" Shelbyville	10,000		
		" Clarksville	25,000		
					35,000
	17.	" Somerville			16,000
	19.	" Trenton			24,000
	28.	" Athens			36,000
Nov.	9.	" Rogersville			23,960
Dec.	20.	" do	8,000		
		" Trenton	4,000		
					12,000
	21.	" do			4,000
		Balance			$30,686,500

359 *Bank-note account, Nashville.* (Page 894.)

1861.					
Sep.	20.	300 sh., 105$, 1401c 1700 co. in error		12,000	
1863, Jan.	14.	Notes burned Febr'y last		1,641	
		Aggregate	1,093,560		
		Less error	12,000		
			$1,081,560		
1861.					
Aug.	28.	By bal. fr'm fol. 892			790,142
		200 sh, 20s 2101c, 2200	8,000		
		2301c⅓, 400.	8,000		
					16,000
	30.	200 " 20s, 2701c, 2900			16,000
Sep.	2.	100 " 20s, 2901c, 3000			8,000
	4.	200 " 20s, 3001c, 3200			16,000
	6.	200 " 50 & 100s, 301c, 500			60,000
	7.	300 " 10s, 1401c, 1700			12,000
	12.	100 " 5s, 4001c, 4100			2,000
	14.	100 " 5s, 4101c, 4200			2,000
	21.	166 " 50 & 100, 501c, 666.			49,800
	24.	200 " 5s, 3201c, 3500			4,000
Oct.	2.	40 " 500 & 1,000, 21c, 60			100,000
	4.	200 " 5s, $4,801c, 5000			4,000
	7.	40s " 500 & 1,000$, 61c, 100			100,000
	10.	100s, 5s, $3,701c, 3800			2,000
	17.	200s, 5s, 3201c, 3300 } 3501c, 3600 }			4,000
	19.	100 sh., 5s, 3601c, 3700	2,000		
		100 " 5s, 3801c, 3900	2,000		
					4,000

		23. 133 of $500, 35c, 166	66,500	
		134 of $1,000, 34c, 166	134,000	
				200,500
360	Dec.	2. 500s & 1,000s, #167-182		24,000
		13. w #183-225		64,500
1862.				
Sep.		25. 500s & 1,000s, #226-343		177,000
		Balance		$1,642,301

I, Robert Ewing, clerk and master of the chancery court at Nashville, Tennessee, do hereby certify that the foregoing is a full and true copy, from pages 892, 893, and 894, of (book) ledger No. 6, of the Bank of Tennessee, now in my possession, at Nashville, as receiver, and that I am receiver of all the books, papers, & assets of the Bank of Tennessee, appointed by decree of said chancery court, in the case therein pending of The State of Tennessee & S. Watson, trustee, vs. The Bank of Tennessee et als.

And the seal of said court hereto affixed.

Witness my hand, at office, this 12th day of March, 1881.

ROBERT EWING,
Clerk & Master & Rec'r.

361 The clerk will copy from record in case of State & Watson vs. Bank of Tennessee, Exhibit B, to answer of Atchinson & Duncan in said cause, found on page of the record 167.

Exhibit B to answer of Atchinson & Duncan.

List of the issues of the Bank of Tennessee presented by W. M. Duncan to Samuel Watson, esqr., president and trustee for payment, which he refused:

22,	Oct.	1, 1861	500 00
2,	Mar.	1, "	100 00
344,	Nov.	1, 1860	100 00
314,	"	"	50 00
479,	"	"	50 00
7280,	Aug.	1, 1861	5 00
362 3477,	Jan.	1, 1861	5 00
1182,	Nov.	1, 1854	5 00
3476,	June	1, 1861	5 00
1158,	Nov.	1, 1854	5 00
474,	April	1, 1856	5 00
331,	"	"	5 00
1391,	Sept.	1, 1854	5 00
481,	Ap'l	1, 1856	5 00
133,	"	"	5 00
1293,	Nov.	1, 1854	5 00
1478,	"	"	5 00
1124,	"	"	5 00
1335,	Sep.	1, 1854	5 00
1341,	"	"	5 00
1245,	"	"	5 00
1094,	Nov.	1, "	5 00
1357,	"	"	5 00
5305,	Aug.	1, 1861	5 00

1288,	Mar. 1,	1856	10 00
1350,	" "		10 00
736,	" "		10 00
1570,	Oct. 1,	1859	10 00
363 2342,	Nov. 1,	1858	5 00
931,	Mar. 1,	1856	10 00
1268,	Oct. 1,	1859	10 00
3130,	June 1,	1861	20 00
1329,	Nov. 1,	1855	20 00
978,	" "		20 00
2359,	June 1,	1861	20 00
977,	July 1,	1854	20 00
3184,	June 1,	1861	20 00
2787,	" "		20 00
1353,	Nov. 1,	1855	20 00
656,	" "		20 00
1171,	June 1,	1854	20 00
2388,	"	1861	20 00
1592,	" "		20 00
162,	Sept. 1,	"	1,000 00
228,	" "		1,000 00
			$3,200 00

W. M. Duncan has demanded of me payment of the above notes
364 of the Bank of Tennessee, and I have refused payment of the same December 2, 1872.

S. WATSON,
Trustee of the Bank of Tennessee.

It was agreed if Duncan was present would prove the facts stated in said exhibit.

This evidence was excluded, upon plaintiff's objection thereto, because incompetent and irrelevant, and defendant excepted.

The report of J. W. Allen and H. L. Claiborne made to Hon. J. R. Hood, chairman, &c., of date January 30, 1866, found in appendix to the house journal of 1865 & 1866, pages 239 & 240, it was agreed, should be treated as the evidence of said Allen, and read subject to exceptions
365 for relevancy & competency alone. This evidence was read without exception.

Report of J. W. Allen and H. L. Claiborne, made to Hon. J. R. Hood chairman, &c., Jan. 30, 1866.

NASHVILLE, *Jan.* 26, 1866.

Mr. JOSEPH W. ALLEN and HENRY L. CLAIBORNE, Esq.:

GENTS: I have the honor to request that you will give a correct statement of the amount of the outstanding circulation of the Bank of Tennessee, designating how much of it has been issued since the 6th of May, 1861, of its capital stock, and of what it consists, and also what amounts were paid into the State treasury as profits of the bank.

I make this request at the instance of the Hon. Samuel Carter, a member of the committee on banks.

Respectfully,

J. R. HOOD,
Ch'n Com. on Banks.

NASHVILLE, *Jan. 30th*, 1866.

Hon. J. R. HOOD,
Chairman Committee on Banks:

DEAR SIR: On the receipt of your note of yesterday, we examined some of the books of the Bank of Tennessee and find that the circulation issued since the 6th of May, 1861, amounts to $1,778,837 (one million seven hundred and seventy-eight thousand eight hundred and thirty-seven dollars), and that the whole amount of outstanding circulation (including the above) is $4,710,666 (four million seven hundred and ten thousand six hundred and sixty-six dollars). From this amount must be deducted the notes on hand at the present bank and all the branches. This can be ascertained by examining the last statement of each branch. The five hundred and thousand post notes, issued since the 6th May, 1861, amount to $466,000 (four hundred and sixty-six thousand dollars). This amount is included in the issue since 6th May, 1861, stated above.

The capital stock amounts to $3,679,068.33 (three millions six hundred and seventy-nine thousand and sixty-eight dollars and thirty-three cents), and consists of the following items, viz:

State bonds issued at the time the bank was chartered...	1,000,000 00
Proceeds of sale of stock in the Union Bank.....	664,494 00
Proceeds of sale of stock in the Planters' Bank.....	232,700 00
Surplus revenue of the United States.....	932,879 00
School fund.....	215,947 35
Ocoee land sales.....	576,536 81
U. S. public lands.....	11,189 80
Common-school fund.....	45,621 18
	3,679,068 33

One of the "general ledgers" of the bank being misplaced, we have not been able to ascertain the precise amount of profits of the bank paid into the State treasury since the law was changed (1856) requiring the bank to pay its profits into the treasury. The books of the treasury should show this. We find, however, that the Hon. Cave Johnson, president of the bank, in his report to the legislature in 1859 states that "the bank paid into the State treasury $850,000 between the first of January, 1857, and the first of July, 1859."

The ledger shows that during the year 1858 the bank bought and cancelled State bonds amounting to $143,000 (one hundred and forty-three thousand dollars), making $998,000 (nine hundred and ninety-eight thousand dollars) contributed to the State in two years and six months, a fraction over ten per cent. per annum on its entire capital.

In 1861, we find there was paid into the State treasury $180,000,

and that previous thereto $175,788.61 of the profits were reserved to cover bad and doubtful debts. The whole amount of notes now in circulation, which were issued prior to the 6th of May, 1861, being $2,931,829 is $747,239.33 less than the capital of the bank, while the whole amount of notes in circulation issued before and since the 6th of May, 1861, is $1,031,597.67 more than the capital. We will cheerfully give your committee any further said in this investigation in our power.

Respectfully,

JOS. W. ALLEN,
H. L. CLAIBORNE.

371 On the argument of the cause the concluding counsel for plaintiff read pages 51 to 56 inclusive, in case of State vs. ,
5 Baxter, to the court, but the jury were instructed by the court and informed by said counsel at the time that the facts in said cause had nothing to do with this case, and that they should not pay any attention or give any effect to them whatever. The defendant's counsel excepted to the reading of said pages to the court by the concluding counsel for plaintiff on the ground that he was reading the conclusion of supreme court on facts that were not in proof but rested on argument of counsel.

The court permitted the counsel to read the pages to the court,
372 but fully instructed the jury that they were to give no effect to anything read by said counsel from said pages.

5th Baxter, pages 51 to 57 inclusive.

From all this testimony we think the following propositions are established:

1. The new issue was made by a board of directors legally appointed and qualified in the usual way prescribed by the charter of the bank, and in pursuance of law.

2. When the bank officers contracted with the governor of the State for the purchase of the war bonds, the old issue and other available assets of the bank on hand were sufficient to meet the indebtedness incurred
373 by the purchase without resorting to a new issue of notes for that purpose.

3rd. The necessity for the new issue of notes was produced by the appropriation of the available means of the bank in meeting the drafts and checks of the military board.

4th. The new issue, when signed by the president and cashier of the bank, passed into the hands of the teller as money, to be paid out as other bankable funds on checks upon the bank.

5th. The new issue was made for the purpose of being used in the ordinary transactions of the bank, and with no special purpose of being paid out upon the checks of the military board.

374 6th. The new issue passed into circulation, together with the old issue and other bankable funds, in payment of all indebtedness of the bank, including that to the military board.

7th. There was nothing on the face of the new issue which distinguished it from the old issue of the bank, and it passed into circulation, and was transferred from hand to hand by delivery, as other money, being payable to bearer.

8th. There is no proof tending to show that the present holders of the new issue, or those who received it directly from the bank, had any knowledge that it was issued for any illegal purpose; but as the present holders became such since the adoption of the amendments to the Constitu-
375 tion, in 1865, and the act of assembly, in 1866, repudiating these notes as illegal and invalid, they are affected with notice of these provisions of the Constitution and of the act of the legislature.

From these several positions, which we regard as established by the record, it follows that the notes in controversy were issued by a board of directors legally appointed and qualified, for the legitimate purposes of the ordinary business of the bank; and, therefore, that the act of issuing the notes to be so used was legal and valid, unless their issuance was so connected with and dependent upon the illegal contract for the purchase of the war bonds and the payment therefor as to constitute a part of that
376 illegal contract. The officers of the bank agreed to buy the war bonds from time to time, as they might be issued, and to pay for them out of the means of the bank. This was the entire contract. It had no reference to the future action of the bank in providing the means of carrying on its regular banking operations. All the bank undertook to do was to pay for the bonds as they were issued and delivered.

The bank was authorized by the legislature to make the contract, and it was made with the governor of the State.

In his testimony Governor Harris says that "every bond that was taken by the Bank of Tennessee was purchased voluntarily, and without
377 either coercion or persuasion on the part of himself or the military board, the officers of the bank having from the beginning expressed themselves as ready to co-operate with him in carrying out the measures necessary to the raising, equipment, maintenance of the army to the extent of their ability, and feeling perfectly satisfied, as he did, that they were in full sympathy with him with regard to those measures, he had no occasion to determine what he would have done if they had entertained different opinions and had pursued a different course."

He says "he adopted the officers of the bank as his chief advisers
378 upon all financial questions, and was more influenced by their advice upon those questions than the advice of all other persons."

It thus appears that the officers of the bank co-operated voluntarily and fully with the governor in making the contract authorized by the legislature, and for the purpose of carrying out the rebellious policy adopted and prescribed by the legislative and executive departments of the State. That the contract so made, although thus sanctioned, was illegal, cannot now be a debateable question. Had the rebellion proved successful as a revolution, it might have been regarded as both legal and wise; but, in view of the result, we are bound to hold it both illegal and disastrous to the
379 bank.

But its illegality can extend no further than the terms embraced in the contract. It was not illegal for want of power in the bank to make it, for the legislature recognized its existence as a corporation, capable of contracting, by conferring upon it the power to make the purchase of the bonds. Its illegality was because it was a contract made in aid of the rebellion against the United States Government. But the powers of the bank, as conferred by its charter, were not affected by the illegal exercise

of the special power conferred to purchase the war bonds. The power to issue notes for circulation within prescribed limits remained as
380 complete after as before the purchase of the bonds. The bank officers brought themselves under no obligation by their purchase of the bonds to resort to the exercise of their power in supplying the deficiency in the circulation of the bank to meet its current expenses. They were willing to aid the rebellion by purchasing the bonds to the full extent of their ability, but they still had the right, under their charter, to provide a new issue of its notes to meet the demands of their banking business, and they agreed, very willingly, as it has turned out, to exhaust al ltheir present available means in war bonds, relying, as they had a right to do, upon the issuance of new bank notes to carry on their ordinary banking operations.

381 It is apparent that there was no necessary connection between the contract to buy the bonds and the issuance of the new notes. It was competent for the bank officers to decline to fill up the vacuum in their available means and to proceed to winding up the affairs of the bank. They chose, however, to exercise their power to issue new notes for circulation and to continue the ordinary banking business of discounting notes and buying bills and receiving deposits. These constituted the legitimate business of the bank, and to carry it on they had the right to make the new issue of the notes of the bank. The charter of the bank was the same under the State government after May 6th, 1861,
382 as before that time.

Its powers and franchises were unchanged by the change in the government. It continued to be fiscal agent of the State government to the same extent, and no more, that it had been under the former government, except that its charter was subject to the amendment or repeal of the legislature. It was as separate from and independent of the control of the other departments of the government as any other incorporated institution.

It follows that the notes issued by the bank after May 6, 1861, for the legitimate purposes of banking, when put into circulation by the
383 bank in its ordinary operations took the character of money, and were in all respects subject to the laws which govern the circulation and transfer of bank bills as distinguished from those that govern as to the circulation and transfer of promissory notes. They were not, properly speaking, evidences of debt or security for money, but were treated as money in the ordinary course and transaction of business by the general consent of the community.

They were transferable by delivery, and were issued and put in circulation with the avowed intention that they should pass from hand to
384 hand and circulate as money. In this view of the liability of *of* the bank to pay them remained and was a continuing promise to pay, until actual refusal of payment upon demand made.

(Farmers' and Mechanics' Bank of Memphis v. White, 2 Sneed, 482; Morse on Banks, 403.)

It follows, also, that as the notes in question were legally issued, and were genuine bills of the bank in the hands of innocent holders, the bank could not resist their payment, although put in circulation by the bank in payment of debts illegally contracted by the bank.

In this respect the notes issued after May 6, 1861, stood on the same

footing as those issued before that time, and as to the latter it has
385 never been contended that the bank was not, liable for their payment, although put in circulation in carrying out the illegal purchase of the war bonds.

From the nature of bank notes circulating as money, the promise of the bank being to bearer, each holder becomes himself a direct contractor with the bank, and every time a bank note is transferred from one holder to another a new contract and a new cause of action is created. (Morse on Banks, 403.) It results that in the hands of an innocent holder the bank is responsible, although the first holder may have received it illegally from the bank.

The only facts relied on to show that the present holders of the
386 new issue are not innocent holders are the admission that the notes were bought at a heavy discount, after the assignment of the assets of the bank, and with a knowledge that they had been repudiated as illegal by the amendment to the constitution of 1865 and the act of the legislature.

It is in proof that down to the time of their repudiation, as aforesaid, the notes in question circulated, in all respects, at par with the old notes of the bank. It is clear that their depreciation was produced by the action of the constitutional convention and of the legislature. But we have seen that this action was unauthorized and had no legal effect. It is
387 clear, therefore, that the knowledge on the part of the holders of the notes that they had been illegally repudiated could not amount to any notice that they were illegally issued. This illegal action of the convention and the legislature, being in violation of the Constitution of the United States, furnished no valid excuse to the bank for refusing to pay notes for which it had received full consideration. If the holders of the notes chose to purchase them, so depreciated, and to risk the liability of the bank for their payment, the fact that they were bought at a discount can furnish no ground of defence against their full payment.

(Clark v. The State and Bank of Tennessee, 7 Cold., 306.)

388 This was all the evidence in the case.

The court charged the jury as follows:

Charge of court.

GENTLEMEN OF THE JURY: This is an action brought by the plaintiff, Keith, founded, as claimed, upon the refusal of the defendant, Clark, as tax-collector, to receive from plaintiff forty dollars of the new issue of the Bank of Tennessee in payment of plaintiff's State taxes.

Before the plaintiff can recover in this action the evidence must
389 show that plaintiff owed that amount of taxes to the State; that he tendered forty dollars of the lawfully issued bills of the Bank of Tennessee, and that the defendant, as State tax-collector, refused to accept such bank bills in payment of said taxes, and that plaintiff paid his said taxes under protest to said collector, and that he, the plaintiff, within thirty days after payment, commenced this suit.

The burden of proof is upon the plaintiff to establish by a preponderance of evidence all of these essential elements to a recovery. If you find all of the above propositions in favor of the plaintiff, then the plaintiff is entitled to a verdict and to recover the amount of his damages.

390 If you find that the bills or notes plaintiff claims to have tendered to defendant as tax-collector in payment of taxes were forged or counterfeit notes of the Bank of Tennessee, then you should find for the defendant. The burden is upon the plaintiff to show that the bills sued upon are genuine; that is to say, the lawful issue of the Bank of Tennessee, duly signed by the president and cashier of said bank.

The date of the bills does not create a presumption that they were put in circulation on the day the bills bear date. At the time that the bills bear date a bank bill payable in dollars was payable in gold or
391 silver. This rule applied to the Bank of Tennessee. The fact that the bank had suspended specie payment prior to and even after the date of said bills did not affect the legal right of the holder to demand payment in gold or silver.

If the Bank of Tennessee, as is claimed by the defendant, was taken possession of by persons in rebellion to the Government of the United States, and by such persons managed in the interest of the said rebellion, or if the agents of the bank were coerced to manage the bank in the interests of said rebellion, then, under such a state of facts, all of the notes of said bank, signed and issued during the existence of such a
392 state of facts, are void as to the State, and the State is not bound to receive them for taxes, and if you so find the bills here sued upon fall within this rule the defendant is entitled to a verdict.

The court further charges you that although there may not have been any actual force used or directly threatened to induce the managers of the bank to surrender the management of the bank to the authorities in rebellion, but if it appears to your satisfaction that the agents of the bank believed, and had reasonable grounds to so believe, that there was no escape from seizure by the rebel element, and the officers had no other means to avoid persons in rebellion from taking possession of the
393 property of said bank, and by reason of such facts the officers of the bank yielded the management of the bank to the rebel authorities, then all of the bills of said bank signed and issued during of such a state of facts are void as to the State, and are not receivable for taxes due the State, even if it should also appear that the lawfully appointed officers of said bank were by such rebel authorities permitted to hold their offices in said bank subject to the control of rebel authorities, and signed and issued bank bills. If you find that the bills sued upon in this case fall within the above rule, you will find for the defendant.

394 If you find that the officers of the bank of their own free will, for the express purpose of aiding the rebellion against the United States, signed and issued bills of the said bank for the purpose aforesaid, then all of the bills of the bank so signed and issued are void as to the State, and not receivable for State taxes.

If the bills here sued upon were signed by the lawful officers of the bank, the law presumes that they were issued in the due course of banking business and for a lawful purpose. The burden of proof is upon the defendant to establish his defence that the notes herein sued upon, or the whole of the series to which they belong, were issued for an illegal
395 purpose, that is, to aid the rebellion. If the defendant has failed to show such fact, you will then find for the plaintiff.

If you find from the evidence in the case that the whole series of bills

signed and issued by said bank after May 6th, 1861, were made and signed by the officers of the bank for the purpose of aiding the rebellion, then, unless you believe that one or both of said bills were signed and issued before said date, you will find for the defendant.

If you believe from the evidence that the volume of currency of said bank had become reduced by reason of aid given by said bank to the rebellion, and that it became necessary in order to transact the ordi-
396 nary and legitimate business of the bank to meet the lawful demands on said bank to sign and issue what is known as the Torbett or new issue, then bills of the bank so signed and so issued are receivable by the State for taxes due the State.

If the bills of the bank were signed and issued for a lawful purpose and afterwards came into the hands of the agents of the rebel State or Confederate State government and were then used to aid the rebellion the bills of said bank so signed and so issued are receivable for taxes due the State.

If you find that the bills of the said bank called the Torbett issue were all made and signed by the officers of the bank for the express pur-
397 pose of aiding the rebellion, then all of said issue is void as to the State, and not receivable for State taxes; the burden of proof is upon the defendant to show this state of facts.

The court further charges you that all of the bills of the said bank, made, signed, and issued by the officers of said bank for the purpose to loan the rebel authorities of Tennessee or of the Confederate States or to purchase the bonds of the Confederate States, or the so-called war bonds of Tennessee, for the purpose to enable the said rebel government to arm, equip, and pay troops raised for the purpose of rebelling against the Government of the United States are void as to the State, and if the bills here sued upon fall within the above rule, you will find for the defendant.

398 It was lawful for the bank to continue the business of banking during the rebellion against the Government of the United States, and all bills of the bank signed and issued by the lawful officers of said bank for legitimate banking business are receivable by tax-collectors of this State in payment of State taxes.

If a part of the Torbett issue was made and signed by the proper officers of the bank to aid the rebellion, and the other part of said issue was made, signed, and issued for the purpose of doing a legitimate banking business, and you cannot say from the evidence in the case that the notes here sued upon were issued in aid of the rebellion or were signed
399 and issued for legitimate banking business, then you should find for the plaintiff.

In other words the law presumes that the notes here sued upon were issued for a lawful purpose, and the burden of proof is upon the defendant to show otherwise before this defence can be sustained.

In determining the question whether or not the Torbett issue or the notes here sued upon were issued in aid of the rebellion or not, you will look to all of the evidence in the case both direct and circumstantial; all of the facts in evidence before you will be considered in determining this question.

400 The statement of facts in the opinion of the court in the case of State and Watson vs. Bank of Tennessee, 5th Baxter, read by

counsel for plaintiff will not be considered by the jury. The jury will alone decide this case upon the testimony in this case.

You are the sole and exclusive judges of the facts. The court cannot aid you in deciding the facts further than to give you the rules of law applicable to the evidence in the case. You are, however, bound to accept the law as given you by the court, and apply it to the facts in the case.

You will consider and construe the charge of the court including the special instructions all together. The court orally charges the jury
401 on the rules of law to govern the jury in weighing evidence, but said oral charge of the court in no way modified the written charge of the court, nor did said oral charge in way change, qualify or modify the decision of the court on the instructions asked for by the defendant, and said oral charge was unexcepted to.

Special instructions asked for by the plaintiff.

The question is resolved into one of fact to be determined by the jury according to the ordinary rules of evidence. The law presumes (after
402 proof that the bills in controversy are genuine) that the Bank of Tennessee put into circulation the Torbett issue in the ordinary course of its business for lawful purposes. The law will not presume the illegality of a transaction, but the illegality must be made to appear by proof.

The direct question to be settled by the jury in this case is, Were the two bills tendered by the plaintiff to the defendant in payment of his taxes issued by the Bank of Tennessee in aid of the rebellion.

This may be shown by proof that the identical bills were issued in aid of the rebellion, or that the class of notes to which they belonged were
403 issued in aid of the rebellion. If the proof shows that the identical notes sued on were issued in aid of the rebellion, or that the whole of the class to which they belonged were issued in aid of the rebellion, then you should find for the defendant.

In either case the burden of proof is on the defendant. It would not be sufficient to show that the issues of the bank in circulation on the 6th day of May, 1861, were exhausted in the purchase of Tennessee war bonds or in paying the checks of the military board, and that thereby it became necessary for the bank to put in circulation the Torbett issue in order to properly carry on its business.

If the proof shows that some of the notes of the bank were issued
404 in aid of the rebellion, and others were issued and paid out in due course of banking, but the proof fails to show to which class these two notes belong, then, under the decision of the supreme court fixing the burden of proof on the defendants, your verdict should be for the plaintiff.

It is not enough, in order to make out a case of aiding the rebellion, to show that the officers of the bank were in sympathy with the rebellion, but to make a case the notes in controversy must have been issued and paid out on some transaction immediately connected with the rebellion, and for the express purpose of aiding it, and to show this the burden of proof is on the defendant.

405 (Given by the court.)

The question is not when were these bills issued; nor what was

the status of the people of the State at the time, nor what were the proclivities of the officers of the bank; nor is it whether some of the issue of the bank after May 6th, 1861, was in aid of the rebellion. The question is were these two very bills embraced in this suit issued in aid of the rebellion.

The presumption of law is that these bills were properly issued, and the burden of proof is on the defendant to satisfy you to the contrary by proof, and unless he has done this the presumption stands, and it is your duty to find for the plaintiff.

406 If the proof shows that a part of the Torbett issue was paid out in aid of the rebellion, and a part paid out in the legitimate business of the bank, but fails to show in which part the two bills in this case were contained, then it will be your duty to find for the plaintiff.

The burden of proof is upon the defendant to show that these two bills were contained in some part of the issue that was paid out in aid of the rebellion.

(Refused by the court for the reason the law is stated in general charge.)

Special instruction for defendant.

407 JNO. Y. KEITH)
vs.
E. A. CLARK.)

Upon the trial of this cause the court was requested to charge as follows:

1st. If it appear that the Bank of Tennessee resided in rebel territory at the time the notes were issued, all of its acts and business are presumed rebellious.

(Refused by the court.)

2nd. If it appear that the bank issued $1,000,000 for legitimate business and $100,000 to aid the rebellion, and it does not appear to which class the bills in dispute belong, the proof being equal, the plaintiff must fail.

408 (Refused by the court.)

3rd. If it appear that a majority or a large part of the bills issued after 6th of May, 1861, were issued to aid the rebellion, but it does not appear to which class the bills in dispute belong, the plaintiff must fail, unless he proves these bills issued for a lawful purpose, the preponderance of proof being against him.

(Refused by the court.)

4th. If the rebel legislature directed the Bank of Tennessee to increase its circulation, and an increase was thereafter made, that such increase, in the absence of proof, will be presumed to have resulted from such legislative direction.

409 (Refused by the court.)

5th. If issued with intent to aid rebellion, whether done under impulse, under contract, or force, or as the free will of bank officers, they are void under the 14th amendment.

(Charged by the court.)

6th. That if at and before the rebellion and secession in 1861 the State of Tennessee possessed and controlled an army, and a bank organized and managed in accordance with laws made for that purpose; and if the then lawful government, to wit, the governor, legislature, and judiciary, and a majority of the people, then rebelled and waged war against the
410 United States; and if the said lawful army, together with the said bank, should continue to be commanded and managed by or in the interest of the said Tennessee government so rebelling, upon the destruction and defeat of such rebel government neither the restored government or the people of Tennessee would be responsible for pay due such soldiers or for bonds or debts made to feed or clothe them.

(Refused by the court.)

7th. And in like manner neither the people or restored government would be responsible for notes or obligations of the bank while under the control and acting as fiscal agent of the rebel government.

(Refused by the court.)

411 That the bank acted through its officers; that if the officers of the bank voluntarily used its funds or credit to aid rebellion, the people are not bound to redeem notes resulting from such desire, directly or indirectly.

(Refused by the court.)

8th. That if the directors being lawfully appointed afterwards favored Governor Harris in his efforts to raise armies, exhausting the funds on hand, and creating new issues, resulting from such desire to aid rebellion, that the people would not be bound to receive such new issue for taxes.

(Refused by the court.)

412 9th. That there can be no innocent holder of bills issued in aid of rebellion, such bills being void in the hands of all persons.

(Given by the court.)

10th. That aid to rebellion may be shown by circumstances, and to prove that the Torbett issue was issued in aid to rebellion the jury may look to the messages of Governor Harris and the acts and resolutions of the legislature of 1861, read to the jury as evidence showing how the facts are.

(Given by the court.)

That the acts May 6, 1861; act July 1, 1861; act June 27, 1861;
413 resolution No. 14 May 8, 1861; act Nov'r 23, 1861; act Dec. 18, 1861, are all rebellious, and acts done under them were null and void.

(Given by the court.)

That if in point of fact the bank did exhaust the old issue in buying war bonds and made new issue for legitimate business; that if such a state of facts exists they must be proved and cannot be imagined or conjectured by the jury; that the jury cannot without proof infer that the bank exhausted its old issue in buying war bonds and issued new issue for legitimate banking business.

(Refused by the court.)

414 *Special instructions asked for by defendant at February term, 1880, and renewed at trial Mqr. 15th, 1881.*

We respectfully ask the court to give the following instructions to the jury with respect to the bills rendered by the plaintiff, alleged to be the bills or notes of the Bank of Tennessee, being issued by said bank to aid the South and the State of Tennessee in the late war against the United States:

1st. If you find from the evidence that the bills tendered, purporting to be the bills or notes of the Bank of Tennessee, were issued by the
415 properly constituted officers or agents of said bank, and you further find that at the time said bills tendered by the plaintiff and offered in evidence were issued that the State of Tennessee or its people were in insurrection or rebellion, or in a state of armed hostility against the United States, and that said bills were issued by said bank in aid of such insurrection or rebellion as to promote such armed hostility against the United States, then, under such a state of facts, if they exist, the bills of the bank would be illegal and improper bills to be received by the defendant under this action, and that it would have been illegal for the defendant to have received them when tendered to him in payment of revenue,
416 and the defendant would be entitled to your verdict.

(Refused by the court.)

2nd. If you find from the evidence that the State of Tennessee or its people, at or before the time the bank bills offered in evidence by the plaintiff were issued, were in insurrection or rebellion against the United States, and if you further find from the evidence that the de jure or de facto legislature and executive authorities of the then State government of Tennessee were aiding and abetting in such insurrection or rebellion, and if you further find from the evidence that while engaged in such
417 insurrection or rebellion said legislature and executive authorities took control of the bank of Tennessee and required it, or if the officers and agents of said bank voluntarily and willingly agreed to furnish means to raise, arm, and equip forces and procure munitions of war, to aid, abet, or promote such insurrection or rebellion against the United States, and that said bank, to enable itself to meet such demands upon it, issued and put in circulation the bills offered in evidence, then under such a state of facts, if they exist, the bills so issued would be illegal as to the State of Tennessee, and it would not have been proper or legal for the defendant to have received them when they were tendered, and the
418 plaintiff is not entitled to recover in this action.

(Refused by the court.)

3rd. If you find from the evidence that at the time the bills offered in evidence were issued by the Bank of Tennessee (if they were signed and issued by its proper officers in conformity to the provisions of its charter) there was an insurrection or rebellion against the United States, and that the then legislature and executive authorities of the State government of Tennessee were aiding, abetting, or promoting such insurrection or rebellion against the United States, and you further find that the then
419 officers of the Bank of Tennessee were co-operating with said legislature and executive authorities in aiding, abetting, or promoting such rebellion or insurrection against the United States, and if you fur-

ther find that the then officers of said bank, in order to aid, abet, or assist in raising and equiping forces and procuring military stores and supplies to aid, abet, or promote said insurrection or rebellion against the United States issued the bills offered in evidence, then under such a state of facts, if they exist, said bills are not receivable by the State in payment of taxes assessed or levied for its support, and the defendant would be entitled to your verdict.

(Refused by the court.)

420 4th. If you find from the evidence that there was an insurrection or rebellion against the Government of the United States, and that the officers of the Bank of Tennessee in order to aid, abet, and promote such insurrection or rebellion advanced the means of the bank to those engaged in such insurrection or rebellion against the United States, and if you should further find that in order to advance its means and credit to those engaged in such insurrection or rebellion it became necessary for it to issue the bills offered in evidence by plaintiff, then, under such a state of facts, if they exist, as to the State of Tennessee, the bills would be
421 illegal, and you should find for the defendant.

(Refused by the court.)

5th. If you find that there was a civil war against the United States, then it was unlawful for the officers of the Bank of Tennessee or the Bank of Tennessee to do any act in aid or promotion of such civil war, and as a matter of law, if said officers or bank undertook or did any such illegal act, then, as to the State of Tennessee, or the people of the State, it was void and could not bind it or them; and if you find from the evidence that the officers of the said bank, or said bank, in order
422 to aid, abet, or promote said civil war against the United States, advanced its means and credit to those engaged in such civil war, and as one of the means employed to so advance its means and credit they or it issued the bills offered in evidence, then, under such a state of facts, if they exist, the bills, as to the State of Tennesse, would be illegal, and the defendant would be entitled to your verdict.

(Refused by the court.)

6th. If you find from the evidence that there was a civil war against the United States, and that the Bank of Tennessee or its officers, to enable said bank to furnish its means and credit to those engaged in
423 such civil war, resorted to an additional issue of circulation of the bank to accomplish this end, and if you find that the bills offered in evidence are a part of the circulation so issued, then, under such a state of facts, if they exist, the bills would be illegal as to the State of Tennessee, and the defendant, as a collector of its revenue, and you should find for him.

(Refused by the court.)

7th. If you find from the evidence that the governing authorities of the State of Tennessee, in the early part of 1861, commenced making armed preparation to resist the authority and supremacy of the
424 United States Government in the exercise of its constitutional functions in the State of Tennessee, and if you further find that at that time the Bank of Tennessee had outstanding and on hand of its circulating notes and other bankable funds sufficient to meet all demands

upon it in the discharge of its regular ordinary banking operations, and appropriated or used its said circulating notes and other banking funds then on hand and in its possession in aiding and promoting the armed preparation for resistance to the authority of the United States, and then resorted to an additional issue of circulating notes to carry on its
425 regular banking operations, and to render further aid and assistance to the armed resistance to the authority of the United States Government, then, under such a state of facts, if they exist, the additional issue of the bank would be prima facie as to the State of Tennessee in this action against its revenue officer illegal, and if the plaintiff tendered circulating notes of said bank which were a part of said additional issue, he should show to your reasonable satisfaction, before he is entitled to recover in this action, that the bills tendered and offered in evidence by him were issued for regular banking operations, and not to aid the armed
426 resistance to the authority of the United States in the territory of the State of Tennessee, and if the evidence fails to show this fact to your reasonable satisfaction your verdict should be for the defendant.

(Refused by the court.)

8th. It is competent for the defendant to show the fact that the bills of the Bank of Tennessee issued after the 6th day of May, 1861, were issued for the purpose of aiding, abetting, or promoting the civil war against the United States, by either positive or circumstantial evidence, or both together, and in determining this question of fact it is competent for the jury to look to all the surroundings of the bank at that time, the
427 character of struggle then in progress, the character and purposes of the agents then in control of the State government, their efforts to raise arms and equip forces, the sympathy and co-operation of the officers of the bank, the business of the bank and its volume of circulation outstanding when the struggle began, the effects of the war upon commerce and the business of the bank, the necessity or the absence of necessity of a further issue for ordinary banking purposes, the amount of the assets of the bank, and the amount of aid extended to those engaged in hostility to the United States, the amount of the additional circulation, and all
428 other facts and circumstances in evidence tending to show the purpose and occasion of the issue of the additional circulation; and if after considering all the facts and circumstances in evidence the jury are satisfied of the probable truth of the fact that the bank or its officers issued the circulation after the 6th of May, 1861, for the purpose of aiding, abetting, or promoting the war against the United States, then it will be the duty of the jury to return a verdict for the defendant.

(Refused by the court.)

9th. The faculty of taxation is a sovereign power, which the State may exercise in its own mode, and as the State may prescribe the kind
429 of money or other articles it will receive in payment of taxes, and as it has exercised its sovereign power and prescribed the special kind of money that may be received by its tax collectors, and as it has prohibited the reception by the tax collectors of the bills of the Bank of Tennessee, issued after the 6th day of May, 1861, the action of the State upon this sovereign question of taxation is supreme, and its tax collectors cannot be held to answer for refusing to receive the issues of the Bank of

Tennessee, prohibited by the State, through its legislature, and if such bills were tendered you will find for the defendant.

(Refused by the court.)

430 10th. We ask your honor to charge the jury that the plaintiff must show before he is entitled to recover in this action that the bills or notes tendered to the defendant and offered in evidence were lawfully issued, and for a lawful purpose, under the provisions of its charter and the laws regulating its operations, and that said bills or notes tendered and offered in evidence were at the time of their issuance payable on demand in gold or silver coin, or became so payable before they were tendered.

(Refused by the court.)

11th. That the notes tendered to the defendant and offered in evidence must be bills or notes of the Bank of Tennessee originally
431 payable on demand, or which should become payable on demand in gold or silver coin, in order to make them receivable by the defendant in payment of taxes due the State, and if the proof fails to reasonably satisfy the jury that they were so payable on demand then they should find for the defendant.

(Refused by the court.)

12th. That the State of Tennessee, in chartering the Bank of Tennessee and becoming the sole stockholder therein, with respect to the transactions of the said bank, divested itself of its sovereignty and put itself on the footing of a private individual or private corporation, and that the
432 State of Tennessee under the charter and laws became a guarantor in law as to the bills or notes of said bank issued by it, and originally payable or which should become payable on demand in gold or silver coin, and that unless the evidence shows to the jury that notice was given to the State within a reasonable time after the bank ceased to do business and issue its notes under the faith of the guaranty by the plaintiff he is not entitled to recover in this action.

(Refused by the court.)

13th. If the evidence shows that the officers and managers of the bank were earnest in support of the Southern Confederacy, and advanced
433 its funds in the purchase of Tennessee war bonds, issued by Isham G. Harris in 1861, honored the checks of the military and financial board raised by him to organize and equip forces, and purchased other Confederate securities in 1861 from the agents of the so-called Confederate States to enable them to carry on war against the United States, then that course of action on its part would be aiding and abetting the rebellion, and illegal; and if the proof shows that Confederate securities and war bonds of the State issued to aid the South were taken by said bank to an amount more than sufficient to absorb all its bankable funds on hand, and it then resorted to an additional issue of its circulating notes, and the Con-
434 federate and other war bonds taken by it were more than sufficient to absorb this additional issue, and the notes tendered and offered in evidence are a part of such additional issue, then, under such a state of facts, the presumption would be that the notes tendered were issued in aid of the war against the United States, and the plaintiff, before he can re-

cover, must show that the notes tendered and offered in evidence were not issued to purchase Confederate securities or other war bonds and in aid of the rebellion.

(Refused by the court.)

14th. That if the people of Tennessee, in constitutional convention, have declared the notes of the Bank of Tennessee issued after the 6th of May, 1861, were issued in aid of the rebellion, and if the legislature of the State of Tennessee, since the reorganization of its State government in 1865, have also declared this fact, then such action and declaration on the part of the people of Tennessee make the notes of the bank issued after that date prima facie illegal, and the plaintiff should show by evidence that the notes tendered by him to the defendant, and offered in evidence, were legal notes of said bank, and not issued in aid of the late rebellion.

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(Refused by the court.)

15th. We ask your honor to charge the jury that if the evidence, positive and circumstantial, before them reasonably satisfies them that the Bank of Tennessee, after May 1, 1861, down to the occupation of Nashville by the Federal army, was virtually in possession of the authorities of the then government of Tennessee, and was operated and managed in the exclusive interest of the Confederate cause, and the action of the then State government of Tennessee, in hostility to the United States, and not for the ends and purposes contemplated by its charter, then, while it was so in the possession of the insurgent State authorities, and so operated and managed, the notes and bills issued by it to circulate as money would be illegal and void in this action, and you should find for the defendant.

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(Refused by the court.)

The defendant by law has a right to plead as many pleas as he desires, and if either one of his pleas are found by the jury to be true the verdict should be for the defendant.

In this cause issue is formed by the plaintiff on 1st, 3rd, 5th, 12th, 13th, & 16th pleas of defendant, and if either of these pleas are for defendant the verdict should be for defendant.

(Refused by the court.)

That evidence is that which satisfies the mind of the jury; that the onus of proof is upon the plaintiff to show, by proof which satisfies the jury, of his right to recover; that unless the proof preponderates in favor of the plaintiff, that is, if the proof is balanced, the verdict must be for defendant.

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(Refused by the court.)

We ask your honor to charge the jury that whether the notes tendered and offered are illegal, as having been issued in aid of the rebellion, as to their payment by the State, under the 14th amendment to the Constitution of the United States, does not depend upon whether the Bank of Tennessee made a contract with the State of Tennessee, or its acting governor in 1861, or the military and financial board created in 1861, to raise, arm, and equip forces to resist the United States, but whether the bank issued the notes to aid, abet, or promote the rebellion in

439 insurrection against the Federal Government, and if the bank issued the notes for this purpose, either with or without a contract to do so, then they are illegal and void as to the State, and you should find for the defendant.

(Refused by the court.)

The presumptions of law are not evidence or proof, but rules adopted by courts to fix the burden of proof on one or the other of the parties.

(Refused by the court.)

That presumptions stand in lieu of proof until overturned or removed by proof.

(Refused by the court.)

That sovereign power is presumed to do right, and so strong is
440 the presumption that it is a maxim of law that it can do no wrong.

(Refused by the court.)

That all acts of the general assembly are presumed constitutional and rightly passed, and when a doubt is raised, and no more, the court will sustain the act.

(Refused by the court.)

That the making and adopting of a constitution is the highest and most solemn act of sovereign power by the people known to American government, and that all declarations and statements of principles and facts contained in a constitution adopted by the people are presumed to be correct and true, and an obligation upon all persons unless shown to be a
441 violation of the Constitution of the United States.

(Refused by the court.)

That under the 12th plea of the defendant, which says he is not indebted to plaintiff, that all defences, including the statute of limitation, are pleaded.

(Refused by the court.)

Was the notes made to promote the interest of the bank, or to give aid and comfort to the rebellion? If for the latter purpose they are not receivable for taxes. The making of the notes must have been for the legitimate purpose of the bank.

(Refused by the court.)

That the notes issued by the bank, no matter for what purpose, if issued without duress, would bind the bank; but if issued to aid the re-
442 bellion they would not be receivable for taxes.

(Refused by the court.)

If these notes, as a matter of fact, were signed and issued by the officers of the bank to enable to aid and comfort to the rebellion, it matters not whether there was any contract or not if the jury find the fact that way, they must find for defendant.

(Refused by the court.)

That inasmuch as the Torbett issue is null and void if issued in aid of the rebellion, and inasmuch as the people, acting as sovereigns, have declared that it was so issued, that the onus or burden of proof is upon the bill-holders, and to enable them to recover they must prove that

443 the notes upon which suit is brought are genuine notes of the Bank of Tennessee, and were issued by the bank in due course of trade and banking, for a valuable consideration, in no way aiding the rebellion.
(Refused by the court.)

That the bank-notes made and prepared, signed, or printed, and issued by the officers of the bank for the purpose of meeting the demands or necessities of Confederate authorities in arming, equip'ing, or sustaining Confederate soldiers, would not be issued in the due course of trade for a valuable consideration, and the State is not bound to receive such notes for taxes.
(Refused by the court.)

444 That all notes issued by the acting bank officers, freely and voluntarily to aid in buying supplies, arms, & equipments, or for paying Confederate armies, or that were issued from duress and threats by Confederate authorities, are null and void in the hands of holdes, as against the State of Tennessee.
(Refused by the court.)

That a purchase, or a pretended purchase, or other tr ansaction by the acting officers of the bank, by which they gave or issued bank-notes for the so-called State bonds, made and signed by I. G. Harris, acting as governor of the rebel State, was not a transaction legal in itself, or in the due course of trade and banking, for a valuable consideration, and
445 notes so issued are not notes receivable for taxes under the bank charter.
(Refused by the court.)

If these notes were not issued in the usual or ordinary course of banking, or to meet an emergency or necessity of the bank, but were signed and put in circulation with intent and for the purpose of giving aid and comfort to, and to meet an emergency and necessity of the rebellious States then waging war and rebellion against the United States, that said notes would not be notes issued in accordance with its charter, and the defendant was not bound to receive them for taxes, as they are not
446 within the provisions of the 12th section of the bank charter.
(Refused by the court.

That all notes issued by the Bank of Tennessee after the passage of the act of the general assembly of Tennessee legalizing the suspension of specie payment were not within the provisions of the 12th section of the bank charter.
(Refused by the court.)

That bills of the Bank of Tennessee were not payable on demand in gold and silver after the passage of the act of Congress making greenbacks or United States Treasury notes a legal tender, and after the passage of said act the bills of the bank were not within the provisions of the 12th section of the bank charter, or receivable for taxes
447 by defendant.
(Refused by the court.)

That a bank acts through its officers, and in no other way, and that the acts of the officers are the acts of the bank.
(Refused by the court.)

That the bank was the creation of law, and could only act legally in accordance with the law and will of the loyal State of Tennessee, and if the bank, through its officers, made and issued bills with intent and for the purpose of aiding the rebel government of Tennessee, that the legal State, when reorganized, would not be bound by the 12th section of the bank charter to receive said notes for taxes.

(Refused by the court.)

448 That if the "new issue," or so-called "Torbett issue" of the Bank of Tennessee resulted from a desire or intent on the part of the officers of bank to give assistance, aid, and comfort to the rebellion then existing against the United States, such notes in the sense of a court would be made and issued to aid the rebellion, and would not be such notes as the State is bound to receive for taxes.

(Refused by the court.)

That if the officers were intimidated, overawed, and put in duress by Governor Harris, or by a mob, or military force and these notes resulted from duress, they are not such notes as were receivable for taxes at the time tendered.

449 And in like manner, if the officers of the bank, without duress but voluntarily, made or issued notes to enable them to give more efficient aid and comfort to the rebellion, the tax collector of the State was not bound to receive such notes for taxes at the time of the tender by plaintiff.

(Refused by the court.)

That if the jury find, from the evidence that the officers of the bank signed and issued notes to Cummings to buy rebel military stores, cause' other notes to be printed at New Orleans or elsewhere, and issued to Boyers to pay the rebel army, and that such bills were of the "new issue," of the character upon which this suit is brought, then, before the

450 plaintiff recover, he must satisfy the jury that the notes sued on were issued in the due course banking, and not notes issued to Cummings, Boyers, or the military board in aid of the rebellion.

(Refused by the court.)

In supreme court.

Motion to advance.—Entered Friday, May 6th, 1881.

E. A. CLARK, TAX COLLECTOR, *v.* JOHN Y. KEITH. } #270, L. D. 13th cir.

451 Counsel for defendant in error moved the court to advance this cause on the docket, and hear the same at the present term, which motion is ordered to be entered and held under advisement.

Order refusing motion.—Entered Monday, May 9th, 1881.

E. A. CLARK, TAX COLL'R,
v.
JOHN Y. KEITH. } #270, L. D. 13th cir.

The motion heretofore entered by counsel for defendant in error to advance this cause on the docket having been considered by the court the same is disallowed and refused.

Commission of special judge.—Entered Thursday, May 25th, 1882.

452 E. A. CLARK, TAX-COLLECTOR,
vs.
JOHN Y. KEITH. } #270 L. D. 13th cir.
* * * *

The honorable Thomas J. Freeman having certified his incompetency to sit in these causes, and the governor of the State of Tennessee having appointed and commissioned William M. Randolph, esq., of the county of Shelby, as special judge, to hear and determine said causes in the place and stead of said Freeman, the said Randolph this day appeared in open court and presented his said commission and took the oath prescribed by law, which commission and oath are in the words and figures following:

453 THE STATE OF TENNESSEE:

Alvin Hawkins, governor, to all who shall see these presents, greeting:

Know ye that whereas Hon. Thomas J. Freeman, judge of the supreme court of Tennessee, having certified to me his incompetency to sit on the trial of the following causes now pending for trial at the present term of said court at Jackson, Tennessee: "Owen Dwyer (clerk) v. Henry Leuhrman;" "Owen Dwyer (clerk) v. C. B. Galloway," and E. A. Clark (tax-collector) v. John Y. Keith":

Now therefore I, Alvin Hawkins, governor of the State of Tennessee, by virtue of the power and authority in me vested, do commission
454 Wm. M. Randolph, of Shelby County, to fill said office of supreme judge to sit on the trial of said causes, agreeably to the constitution and laws, during the term, with all the powers, privileges, and emoluments thereunto appertaining by law.

In testimony whereof I, Alvin Hawkins, governor as aforesaid, have hereunto set my hand and caused the great seal of the State to be affixed at the department in Nashville, on this 17th day of April, A. D. 1882.

[SEAL.] ALVIN HAWKINS.

By the governor:

D. A. NUNN,
Secretary of State.

THE STATE OF TENNESSEE:

455 I, William M. Randolph, do solemnly swear that I will support the Constitution of the United States and of the State of Tennes-

see, and administer justice without respect to persons, and impartially discharge all the duties incumbent on me as a judge of the supreme court of Tennessee, to the best of my skill and ability. And I do further swear that I have not, directly or indirectly, given, accepted, or knowingly carried a challenge in writing, or otherwise, to any person being a citizen of this State, or aided or abetted therein, since I have been a citizen of this State, nor since the adoption of the constitution of 1870, and that I will not, during my continuance in office, be guilty of either of these acts.

W. M. RANDOLPH.

456 Sworn to and subscribed before me in open court this 25th day of May, A. D. 1882.

JAS. W. DEADERICK, *C. J.*

And thereupon said causes came on for hearing, and, after argument by counsel, were taken under advisement by the court.

457 *Opinion.*

E. A. CLARK, TAX-COLLECTOR,
v.
JOHN Y. KEITH.

(1.) When a jury returns a general verdict and also returns special findings, the latter, to be regarded for any purpose, are not of such consequence that an inconsistency between them and the general verdict will impair the effect of the latter.

(2.) In an action against a tax-collector, under the provisions of ch. 44 of the acts of 1873, p. 71, entitled, "to facilitate the collection of revenue," to recover back money paid for taxes, and the State, after a refusal of such tax-collector to accept notes of the Bank of Tennessee bear-
458 ing date since the 6th May, 1861, tendered in payment of such taxes, held (1) the plaintiff was required first to make proof of the genuineness of the notes tendered; (2) after such proof of genuineness, if the defendant relied upon the fact that the notes had been issued in aid of the rebellion against the Government of the United States as the ground of his refusal to accept them, the burden of proving that they had been so issued was upon the defendant, and it was the province of the jury, upon consideration of all the evidence adduced, to determine whether the defendant had made the necessary proof.

(3.) That the notes were issued after the 6th May, 1861, and dur-
459 ing the rebellion was not evidence that they were issued in aid of the rebellion, since the presumption of the law is that all such notes were issued in the ordinary course of the business of the bank, and for lawful purposes.

(4.) That the issues of the bank in circulation on the 6th May, 1861, were exhausted in the purchase of Tennessee war bonds or in paying the checks of the military board, and that thereby it became necessary for the bank to put in circulation the notes which were issued after such date in order properly to carry on its business, was not evidence that such notes were issued in aid of the rebellion.

(5.) That the officers of the bank were in sympathy with the

460 rebellion during the time the notes were being issued is not evidence that such notes were issued in aid of the rebellion.

(6.) To show that the notes were issued in aid of the rebellion there must be proof that they were issued in some transaction immediately connected with the rebellion and for the purpose of aiding it.

(7.) The burden on the defendant of proving that the notes were issued in aid of the rebellion is not shifted by evidence that half or more of the notes of the class to which they belong were issued in aid of the rebellion.

(8.) If the notes were originally issued for a lawful purpose the fact that they were afterwards used to aid the rebellion did not affect their validity.

461 (9.) If the proof established that the notes were issued in aid of the rebellion, whether for the purpose of being loaned to the rebel authorities of Tennessee or to the Confederate States, or to purchase the bonds of the Confederate States, or the war bonds of Tennessee, or to enable the rebel government to arm, equip, or pay troops raised for the purpose or rebelling against the Government of the United States, or in any other way, they were void, and the State was not bound to receive them for taxes. And if the notes were in fact issued with the intent to aid the rebellion it is immaterial whether they were issued under impulse or under contract, or in consequence of force, or as the free will of the

462 Bank of Tennessee; in any event they are equally void.

(3.) The State was not entitled to any notice of the non-payment of the notes before it was bound to receive them for taxes under the 12th section of the charter of the Bank of Tennessee, acts of 1837, 1838, ch. 107, p. 153.

(4.) The notes of the Bank of Tennessee lawfully issued after the 6th May, 1861, notwithstanding the act suspending specie payment from January, 1861, till July, 1862, ch. 5, p. 9, of the acts of the general assembly at the extra session in January, 1861, have always been payable on demand in gold or silver coin within the meaning of the 12th section of the charter of the Bank of Tennessee, acts of 1837, 1838, ch. 107,

463 p. 153, and therefore receivable for taxes and the State. Cases relied upon, Furman v. Nichol, 8 Wallace, 44; State and Watson v. Bank of Tennessee, 5 Baxter, 1; Keith v. Clark, 97 U. S., 454, and Keith v. Clark, 4 Lea, 718.

E. A. CLARK, TAX-COLLECTOR,
v.
JOHN Y. KEITH.

Appeal in error from the law court of Madison County, Hon. L. B. Horrigan, judge criminal court of Shelby County, sitting by interchange, presiding.

Opinion.

This case is here for the third time, and in the mean time has been once to the Supreme Court of the United States.

When last here the judgment of the court below was reversed and

464 the cause was remanded for a new trial, solely on the ground that the jury had not returned any general verdict, but had returned only

a special verdict, and in that verdict had not found all the facts necessary to support the judgment which the court below had rendered in favor of Keith the plaintiff, against Clark, the tax-collector, as defendant.

The particular material fact as to which the jury had returned no finding was whether the notes of the Bank of Tennessee, which Keith had tendered to Clark as tax-collector in part payment of the taxes Keith owed the State, had been issued in aid of the rebellion against the Government of the United States. As to this fact the jury reported they were
465 not able to agree. (Keith v. Clark, 4 Lea, 718.)

Upon the return of the case there was a trial before a jury in the court below, and a general verdict for Keith, and also a special finding as to two facts, and a judgment was pronounced in favor of Keith. A motion for a new trial was made and overruled. A bill of exceptions was tendered by Clark and was allowed and filed, and he has prosecuted an appeal in error to this court. The bill of exceptions sets out all the evidence adduced in the court below, the rulings of the court upon various questions arising during the progress of the trial, and the instructions given and those refused, and such exceptions as the appellant re-
466 served. It is not necessary to state the facts with particularity, as they sufficiently appear in the report of the case already referred to. (4 Lea, p. 718.) A general statement of them is, that Keith owed the State certain taxes, and for the purpose of paying them he tendered Clark, the tax-collector of Madison County, two notes of the Bank of Tennessee, each for the sum of twenty dollars, issued subsequently to the 6th May, 1861, and of the class usually designated as "Torbett issue" or "new issue," and money enough in addition to make up the amount of his taxes, and Clark refused to receive the notes of the bank, and Keith then paid his taxes in money under protest, and within thirty days afterwards,
467 as permitted by the statute, he brought this action against Clark to recover from him the sum of forty dollars, the amount of the two notes of the bank so tendered by Keith to Clark, and so refused by him.

As has been stated, the jury found a general verdict for Keith. The entry upon the record, after stating the empanelling of the jury, &c., proceeds, "who, having arrived at their verdict, upon their oaths do say that they find the matters in controversy in favor of the plaintiff, and that the plaintiff is entitled to recover from the defendant the sum of forty dollars."

This verdict disposes of the whole case, and there was no neces-
468 sity for a special finding of facts, as such findings could not possibly affect the consequences necessarily resulting from the general verdict.

The entry of record as to the special findings, which immediately follows the entry already copied as to the general verdict, is in these words: "And in response to the following questions, they thereupon made the following special findings, to wit: To the question, 'Does the proof show that the Bank of Tennessee did a regular banking business after the 6th May, 1861, that is, was any part of its business in receiving deposits, paying checks, discounting bills and notes, &c.?' they find in the affirmative. And in response to the question, 'Does the proof show whether the two
469 notes in issue were issued and paid out in aid of rebellion or in the ordinary course of banking?' they find in the negative."

Taking the language used in the last question and the jury's answer to it, literally, it may be doubtful if it amounts to an affirmance that the notes tendered by Keith to Clark were not issued or paid out in aid of the rebellion. The jury undoubtedly intended so to affirm. And the general verdict they returned, assuming they were governed by the instructions the court gave them, necessarily found that the notes had not been issued in aid of the rebellion. To interpret the finding, therefore, as meaning only that the proof did not show whether the notes in controversy were
470 issued and paid out in aid of the rebellion, or were issued and paid out in the ordinary course of the business of the bank, would be to impute an idle question to the court or a frivolous answer to the jury, since the question and answer so understood could not have been of the least importance in the trial of the issues in the case. In support of the general verdict and of the judgment of the court below we shall therefore assume that the jury has found as a fact in the case that the notes tendered by Keith and refused by Clark were not issued or paid out in aid of the rebellion. We feel the less hesitancy in adopting this construction of the special finding, since none of the able counsel on either side have understood it differently, but all of them have argued the case as if the
471 jury have found the fact to be just as we assume they did. However, were we to concede that the language employed in the special finding could not be interpreted to mean that the notes in question have not been issued in aid of the rebellion, we should not feel authorized even then to disregard the general verdict, which, as has been said, clearly found the fact to be that way, but, on the contrary, should feel constrained to reject the special finding, and proceed as if there had been none.

In Furman v. Nichol, 8 Wallace, 44, the court decided that by the 12th section of the charter of the Bank of Tennessee, acts of 1837, 1838, ch. 107, p. 153, which is in these words, "That the bills or notes of said corporation originally made payable, or which shall have become
472 payable, on demand, in gold or silver coin, shall be receivable at the treasury of the State, and by all tax-collectors and other public officers in all payments for taxes and other moneys due the State," the State made a contract with every one who afterwards become a holder of notes of the bank that the State would receive for all payments for taxes or other moneys due to it all the notes of the bank lawfully issued while the 12th section remained in force, and that such contract which the court termed a guaranty by the State attached to each note so issued as much as if written on the back of it, and it went with it everywhere as long as the note lasted, although after the note was issued the 12th section
473 was repealed. The judgment in that case was that the writ of mandamus be awarded requiring the clerk of the county court to receive the notes of the bank which the plaintiffs in the petition for the mandamus had tendered in payment of the taxes due the State by them.

The notes involved there had been issued prior to the 6th May, 1861, and in deciding the question before it, the court expressly declared that "the discussion of the principles which settle this case is not intended by the court to apply to the issues of this bank while under the control of the insurgents, because such a case is not before us, and it will be time enough to decide the important questions which it would present
474 when it arises, if it ever should arise.

We must regard Furman v. Nichol as having established the proposition that notes of the Bank of Tennessee, such as Keith tendered Clark, should have been received by Clark in payment of the taxes Keith owed the State, unless there is a difference between those notes and the notes involved in Furman v. Nichol, growing out of the fact that the notes tendered by Keith were dated after the 6th May, 1861, and those involved in Furman v. Nichol were dated before that time.

The question whether or not there was such a difference arose in the case of State and Watson v. Bank of Tennessee, 5 Baxter, p. 1.

But the controversy there was between the holders of the notes
475 and the bank, the question as to the obligation of the State upon the notes not being involved. The decision was "that the notes of the bank issued since May, 1861, held by Atchison & Duncan, and set out in their answer, are legal and subsisting debts of the bank, entitled to payment at their face value, and having the same priority of payment out of the assets of the bank as the notes issued before the 6th May, 1861." In that case the court assumed the law to be that if the notes were in fact issued and put in circulation in aid of the rebellion they were for that reason illegal and void.

The proposition, we presume, would not be denied anywhere. The
476 court then decided that as a matter of law, and upon the evidence before it, the particular notes in question had been issued "by a board of directors legally appointed and qualified for the legitimate purposes of the ordinary business of the bank, and, therefore, that the act of issuing the notes to be so used was legal and valid, unless their issuance was so connected with and dependent upon the illegal contract for the purchase of the war bonds and the payment therefor as to constitute a part of that illegal contract." Whether the issuance of those notes was connected with and dependent upon such illegal contract the court then proceeded to examine, and concluded that "it was apparent that there
477 was no necessary connection between the contract to buy the bonds and the issuance of the new notes."

This general conclusion was announced:

"It follows that the notes issued by the bank after the 6th May, 1861, for the legitimate purposes of banking, when put in circulation by the bank in its ordinary operations, took the character of money, and were in all respects subject to the laws which govern the circulation and transfer of bank bills, as distinguished from those that govern as to the circulation and transfer of promissory notes. They were not, properly speaking, evidences of debt or security for money, but were treated as money in
478 the ordinary course and transaction of business by the general consent of the community. They were transferable by delivery, and were issued and put in circulation with the avowed intention that they should pass from hand to hand and circulate as money. In this view, the liability of the bank to pay them remained, and was a continuing promise to pay, until actual refusal to pay upon demand made."

But the State, as already remarked, was not before the court, and nothing was decided, as the court expressly said, upon the question "whether the State is bound to receive the new issue in payment of taxes, as she was bound to receive the old issue."

479 The question whether the State is bound to accept the issues of

the Bank of Tennessee made after the 6th May, 1861, in payment of taxes due it, was directly presented for the first time, so far as we are informed, in the present case. When this case was first determined here, at the term 187 , it appears there was no written opinion, but only an affirmance of the judgment of the lower court refusing the mandamus to compel Clark, as tax-collector, to receive the notes tendered by Keith in payment of the taxes Keith owed the State. That judgment was taken by writ of error before the Supreme Court of the United States, and there reversed, and the case was remanded here "for further
480 proceeding in accordance with the opinion" of that court. That opinion thereby became the law of this case, and this court so assumed when this case was here before. (Keith v. Clark, 4 Lea, 718.)

It follows that the only questions open now for consideration are such as that court has not passed on in this case; and our inquiries are to be confined to such questions, and the question whether the instructions of the court below are in harmony with the opinion of the Supreme Court of the United States. We say this because an examination of the record has satisfied us that the objections made by the appellant to the rulings
481 of the court below upon questions of evidence, if not altogether without foundation, are of a character not to authorize a reversal of the judgment under the requirements of section 4516 of the code. And as for a review of the findings of the jury upon the facts, it is scarcely to be expected that this court should go into such a review when one of the counsel for the appellant stated in his oral argument that had he been on the jury he should have felt obliged, under the instructions of the court, to have returned the same verdict which the jury did return. It may not, however, be improper to remark that the evidence in this case does
482 not seem to us to be any stronger in favor of the appellant than the evidence in the case of State and Watson v. Bank of Tennessee, 5 Baxter 1, was in favor of the bank; and in that case this court arrived at a conclusion upon the facts the same in substance as the verdict of the jury in this case. Neither do we deem it necessary to consider the correctness of the judgment of the court below on the questions of pleading which were presented, since it is quite clear that under the pleadings as settled by the court the appellant was permitted to make every substantial defense he relied on.

The objection that the court below permitted the counsel of Keith to read to the court in the presence of the jury from the report of the
483 case of State and Watson v. Bank of Tennessee, 5 Baxter, p. 51 to 56, each inclusive, is without merit. The course to be pursued on such occasions must necessarily be left to the discretion of the judge trying the case, and this court cannot undertake to control his discretion, unless in a case where it is apparent that injustice has been done. In this case the court below was at particular pains to correct any impression that may have been made on the minds of the jury by what was read. At the time of the reading, and again in the instructions given, the court told the jury that what was read had nothing to do with the case, and that they would pay no attention to it.

Recurring then to the case of Keith v. Clark, 97 U. S., 454,
484 we find these propositions in substance decided:

(1.) That the notes issued by the Bank of Tennessee subsequently

to the 6th May, 1861, and while the State was in rebellion against the Government of the United States, were not necessarily void, but on the contrary, if issued in the ordinary course of the business of the bank, were obligatory upon the State under the 12th section of the charter of the bank, and receivable by it for the payment of taxes which might be due it to the same extent as the notes issued before the 6th May, 1861.

(2.) That the notes of the Bank of Tennessee in fact issued in aid of the rebellion against the Government of the United States were
485 absolutely void, and the State could not be compelled to receive such notes so issued in payment of taxes due it.

(3.) That the question whether the particular notes of the bank now in controversy were or were not issued in aid of the rebellion was one of fact proper to be determined upon the evidence to be adduced in the case, and that the party asserting their invalidity was required to set up and prove the facts on which such invalidity depended, and that no presumption could arise from anything of which the court could take judicial notice that the notes were issued in aid of the rebellion, or on any consideration forbidden by the Constitution or laws of the United States.

486 In addition to what was decided by the Supreme Court of the United States in this case when there, this court decided when this case was here before, these propositions:

(1.) That this suit had been properly brought under the provisions of ch. 44 of the acts of 1873, p. 71, entitled "An act to facilitate the collection of revenue," approved 21st March, 1873.

(2.) That the statute of limitations had no application to the notes of the Bank of Tennessee tendered by Keith to Clark as tax-collector in payment of the taxes Keith owed the State.

In the opinion delivered by Patterson, special judge, it is said: It follows then that the whole question is resolved into one of fact to be determined by a jury according to the ordinary rules
487 of evidence. The law presumes that the Bank of Tennessee put into circulation the Torbett issue in the ordinary course of its business for lawful purposes. The law will not presume the illegality of a transaction, but the illegality must be made to appear by proof. The direct question to be resolved by the jury in this case is were the two bills tendered by the plaintiff to the defendant in payment of his taxes issued by the Bank of Tennessee in aid of the rebellion? This may be shown by proof that the identical bills were issued in aid of the rebellion, or that the class of notes to which they belong were issued and circulated in aid of the rebellion. In either case the burden of proof is on the defendant.

488 It would not be sufficient to show that the issues of the bank in circulation on the 6th day of May, 1861, were exhausted in the purchase of Tennessee war bonds, and that thereby it became necessary for the bank to put in circulation the Torbett issue in order to properly carry on its business, for the necessity of doing an act altogether legal may grow out of an act done by the same person which is altogether illegal?

(Keith v. Clark, 4 Lea, p. 727, 728.)

It only remains to examine the instructions given by the court below and those it declined to give, and to determine whether or not in those rulings the court committed error.

And first let us see what the instructions were:

489 The court told the jury in substance that before the plaintiff could recover the evidence must show that he owed that amount of taxes to the State; that he tendered forty dollars of the lawfully issued bills of the Bank of Tennessee, and that the defendant, as State tax-collector, refused to accept the bank bills in payment of said taxes, and that the plaintiff paid his said taxes under protest to the said collector, and that the plaintiff within thirty days after payment commenced this suit. The burden of proof; the court told the jury to establish by a preponderance of evidence; all these essential elements to a recovery was upon the
490 plaintiff. If they found the proposition first stated in favor of the plaintiff then the plaintiff was entitled to a verdict, and to recover the amount of his damages. * * * That the burden was upon the plaintiff to show that the bills sued upon were genuine; that is to say, the lawful issues of the Bank of Tennessee, duly signed by the president and cashier of the bank:

The court continued:

If the Bank of Tennessee was taken possession of by persons in rebellion to the Government of the United States, and by such persons managed in the interest of the said rebellion, or if the agents of the bank were coerced to manage the bank in the interests of the rebellion, then under such
491 state of facts all the notes of said bank signed and issued during the existence of such a state of facts are void as to the State, and the State is not bound to receive them for taxes, and if you find the bills here sued upon fall within this rule, the defendant is entitled to a verdict.

Although there may not have been any actual force used or directly threatened to induce the managers of the bank to surrender the management of the bank to the authorities in rebellion, if it appears to your satisfaction that the agents of the bank believed, and had reasonable grounds to believe, that there was no escape from seizure by the rebel element, and that the officers had no other means to avoid persons in rebellion
492 from taking possession of the property of said bank, and that by reason of such facts the officers of the bank yielded the management of the bank to the rebel authorities, then all of the bills of the bank signed and issued during such a state of facts are void as to the State, and are not receivable for taxes due the State, even if it should also appear that the lawfully appointed officers of the bank were by such rebel authorities permitted to hold their offices in said bank subject to the control of the rebel authorities, and signed and issued bank bills. If you find that the bills sued upon fall within the above rule you will find for the defendant.

493 If you find that the officers of the bank, of their own free will, for the express purpose of aiding the rebellion against the United States, signed and issued bills of the said bank for the purpose aforesaid, then all the bills of the bank so signed and issued are void as to the State and not receivable for State taxes.

The court further charged:

If the bills here sued upon were issued by the lawful officers of the bank, the law presumes they were issued in due course of banking business, and for a lawful purpose. The burden of proof is upon the defendant to establish his defense that the notes herein sued upon, or the whole series to which they belong, were issued for an illegal purpose; that

494 is, to aid the rebellion. If the defendant has failed to show such fact you will then find for the plaintiff.

If you find from the evidence that the whole series of bills signed and issued by said bank after May 6th, 1861, were made and signed by the officers of the bank for the purpose of aiding the rebellion, then unless you believe that one or both of said bills were signed and issued before said date you will find for the defendant.

If you believe from the evidence that the volume of currency of said bank had become reduced by reason of aid given by said bank to the rebellion, and that it became necessary, in order to transact the ordinary and legitimate business of the bank, to meet the lawful demands on
495 said bank, to sign and issue what is known as the Torbett or new issue, then bills of the bank so signed and so issued are receivable by the State for taxes due the State.

If the bills of the bank were signed and issued for a lawful purpose, and afterwards came into the hands of the agents of the rebel States or Confederate States Government, and were used to aid the rebellion, the bills of said bank, so signed and so issued, are receivable for taxes due the State.

If you find that the bills of the said bank called the Torbett issue were all made and signed by the officers of the bank for the express purpose of aiding the rebellion, then all of said issues is void as to the State,
496 and not receivable for State taxes. The burden of proof is upon the defendant to show this state of facts.

All the bills of the said bank made, signed, and issued by the officers of said bank for the purpose to loan to the rebel authorities of Tennessee or of the Confederate States, or to purchase the bonds of the Confederate States, or the so-called war bonds of Tennessee, for the purpose to enable the said rebel government to arm, equip, and pay troops raised for the purpose of rebelling against the Government of the United States are void as to the State, and if the bills here sued upon fall within the above rule you will find for the defendant.

It was lawful for the bank to continue the business of bank-
497 ing during the rebellion against the Government of the United States, and all bills of the bank signed and issued by the lawful officers of said bank for legitimate banking business are receivable by tax-collectors of the State in payment of State taxes.

If a part of the Torbett issue was made and signed by the proper officers of the bank to aid the rebellion, and the other part of said issue was made, signed, and issued for the purpose of doing a legitimate banking business, and you cannot say, from the evidence in the case, that the notes here sued on were issued in aid of the rebellion, or were signed and
498 issued for legitimate banking business, then you should find for the plaintiff. In other words, the law presumes that the notes here sued upon were issued for a lawful purpose, and the burden of proof is upon the defendant to show otherwise before the defense can be sustained.

In determining the question whether or not the Torbett issue or the notes here sued upon were issued in aid of the rebellion or not you are to look to all the evidence in the case, both direct and circumstantial. All of the facts in evidence before you will be considered in determining this question.

The statement of facts in the opinion of the court, in the case of State and Watson v. Bank of Tennessee, 5 Baxter, read by the counsel
499 for plaintiff, will not be considered by the jury. The jury will alone decide this case upon the testimony in this case.

You are the sole and exclusive judges of the facts. The court cannot aid you in deciding the facts further than to give you the rules of law applicable to the evidence in this case. You are, however, bound to accept the law as given you by the court, and apply it to the facts in this case. You will consider and construe the charge of the court, including the special instructions, all together. There was more of the charge, but it is not deemed necessary to notice any more here. One other instruction will be noticed further along.

500 The plaintiff asked certain instructions, but the court gave only the following, asked by him. The question is resolved into one of fact, to be determined by the jury according to the ordinary rules of evidence. The law presumes (after proof that the bills in controversy are genuine) that the Bank of Tennessee put into circulation the Torbett issue in the ordinary course of its business for lawful purposes. The law will not presume the illegality of a transaction, but the illegality must be made to appear by proof.

The direct question to be settled by the jury in this case is, were the two bills tendered by the plaintiff to the defendant in payment of
501 his taxes issued by the Bank of Tennessee in aid of the rebellion. This may be shown by proof that the identical bills were issued in aid of the rebellion, or that the class of notes to which they belonged were issued in aid of the rebellion. If the proof shows that the identical notes sued on were issued in aid of the rebellion, or that the whole of the class to which they belonged were issued in aid of the rebellion, then you should find for the defendant.

In either case the burden of proof is on the defendant. It would not be sufficient to show that the issues of the bank in circulation on the 6th May, 1861, were exhausted in the purchase of Tennessee war bonds, or in paying the checks of the military board, and that thereby it
502 became necessary for the bank to put in circulation the Torbett issue in order to properly carry on its business.

If the proof shows that some of the notes of the bank were issued in aid of the rebellion, and others were issued and paid out in due course of banking, but the proof fails to show to which class these two notes belong, then, under the decision of the supreme court fixing the burden of proof on the defendant, your verdict should be for the plaintiff.

It is not enough, in order to make out a case of aiding the rebellion, to show that the officers of the bank were in sympathy with the rebell-
503 ion, but, to make a case, the notes in controversy must have been issued and paid out on some transaction immediately connected with the rebellion, and for the express purpose of aiding it, and to show this the burden of proof is on the defendant.

The defendant asked the following instructions, which the court gave:

If the notes in question were issued with intent to aid the rebellion, whether done under impulse, under contract, or force, or as the free will of the Bank of Tennessee, they are void under the 14th amendment to the Constitution of the United States.

That there could be no innocent holder of bills issued in aid of rebellion, such bills being void in the hands of all persons.

504 That aid to the rebellion might be shown by circumstances, and to prove that the Torbett issue was issued in aid to rebellion the jury might look to the messages of Gov. Harris and the acts and resolutions of the legislature of 1861, read to the jury as evidence, showing how the facts were.

That certain designated acts of the general assembly were rebellious, and acts done under them were null and void.

The defendant asked the court to charge the jury that if it appeared that the Bank of Tennessee issued one million dollars for legitimate business and a million dollars to aid the rebellion, and it did not appear to which class the bills in dispute belonged, the proof being equal, the

505 plaintiff must fail. He asked the same instruction on the supposition that the jury should find that a majority of the notes issued by the Bank of Tennessee after the 6th May, 1861, were issued to aid the rebellion.

He asked the court to tell the jury that in such case it would be incumbent on the plaintiff to prove that the notes he had tendered had been issued for a lawful purpose.

The defendant also asked the court to instruct the jury that the State was entitled to notice of the non-payment of the notes in question before it could be bound upon its guaranty for the payment of them; and

506 also that if the jury found for the defendant on any one of the pleas on which issues had been joined they should return a verdict for him. The court refused all these instructions.

Of this last instruction it is sufficient to say the court had given specific instructions concerning the whole case, and such a general instruction could have been of no possible aid to the jury in arriving at a correct verdict, but could only have misled them, if it could have had any effect at all.

Assuming the instruction was not technically erroneous the court should not have given it under the circumstances.

507 As to the instruction that the State was entitled to notice of the non-payment of the notes before it could be bound on its contract, contained in the 12th section of the charter of the Bank of Tennessee, we need say no more than that the position has not a particle of reason or authority to rest upon.

The other instruction' asked by the defendant and refused by the court were the reverse of the instructions the court gave, and if the court was right in giving the latter it was necessarily right in refusing the former.

After a careful comparison of the charge of the court with the principles which we have seen have been established to govern the de-

508 cision of this case, we have not been able to detect the slightest error of which the appellant has the right to complain. In argument, one of the counsel for the appellant said the effect of the court's instructions was to tell the jury that if a million dollars of the notes of the bank of Tennessee, issued since the 6th May, 1861, were issued in aid of the rebellion, and only two twenty-dollar notes were issued in the ordinary course of the business of the bank for lawful purposes, that it would be incumbent upon the appellant to establish by proof that the two

509 notes in question in this case were not the two which were so lawfully issued.

If the instructions the court gave could legitimately bear the construction thus put upon them, it is by no means admitted that they would have been erroneous. But the court used no language supposing an extreme case, or that intimated to the jury that the principle it laid down to govern their action should be pressed beyond the bounds of reason.

The evidence adduced did not tend to establish any such state of facts as that a million dollars, or any other large sum of the notes of the bank of Tennessee, issued since the 6th May, 1861, were issued in aid of the rebellion, while only two twenty-dollar notes, or some other insignifi-
510 cant sum, were issued for lawful purposes. It is possible the evidence in the record establishes in effect just the reverse of each of the assumptions. Whether it does or not we need not say, but we do say that, taking the charge of the court as a whole, and putting a fair interpretation upon it, it correctly told the jury that the genuineness of the notes was first to be proved by the appellee, and after he had made such proof, that the burden of proving that the notes had been issued for an unlawful purpose, or in aid of the rebellion, was upon the appellant, and that in determining whether or not the evidence showed that the
511 plaintiff had made the necessary proof, the jury was to look at all the evidence in the case, and arrive at such a conclusion as that evidence in their judgment warranted. This was the substance of the decisions of the Supreme Court of the United States, and of this court on the question, and was what the court should have told the jury.

There is one question not yet noticed, which is presented in the record, as follows:

The court below told the jury that at the time the notes here in question bear date, a bank note issued payable in dollars, may payable in gold and silver, and that this rule applied to the notes of the Bank of Tennessee; and that the fact the bank had suspended specie payment
512 prior to, and even after the date of the notes, did not affect the legal right of the holder of them to demand payment in gold or silver.

The appellant asked the following instructions, which the court refused to give.

That the notes tendered to the defendant and offered in evidence must be bills or notes of the Bank of Tennessee originally payable on demand, or which should become payable on demand, in gold or silver coin, in order to make them receivable by the defendant in payment of taxes due the State; and if the proof fails reasonably to satisfy the jury that they were so payable on demand, then they should find for the defendant.

513 That all notes issued by the Bank of Tennessee after the passage of the act of the general assembly of Tennessee legalizing the suspension of specie payments, were not within the provisions of the 12th section of the bank charter.

That the bills of the bank of Tennessee were not payable on demand in gold and silver after the passage of the act of Congress making greenbacks or United States Treasury notes a legal tender, and after the passage of said act the bills of the bank were not within the provisions of the 12th section of the bank charter or receivable for taxes by defendant.

514 If what the court told the jury on this subject in the paragraph copied above was correct then all the above instructions asked by the appellant were properly refused.

It has been very earnestly argued that the notes tendered by Keith to Clark are not such as the State was obliged by the 12th section of the charter of the Bank of Tennessee to accept in payment of taxes due it, because they were "not originally made payable" and have never "become payable on demand in gold and silver coin." It is not denied that the notes were payable to bearer on demand in dollars, and were issued that they might be circulated as money. But assuming these facts, the argument is
515 that as the notes were issued after the passage of ch. 5, p. 9, of the acts of the general assembly at the extra session in January, 1861, and before the 1st July, 1862, they were issued at a time when the bank was not required to redeem them in coin, and, as the Congress of the United States, before the 1st July, 1862, by law declared the Treasury notes of the United States, popularly known as "greenbacks," a legal tender in payment of all debts, public and private, with certain exceptions not material here, the bank never at any time was bound to redeem the notes in coin. The manifest chief purpose of the act of the general assembly of January, 1861, just referred to, was to relieve the banks of the State which
516 had accepted the provisions of the act passed on the 8th February, 1860, being ch. 27, of the acts of 1859–1860, from the results which that act had declared should follow a suspension by them of specie payment in redemption of their notes for a consecutive period of one hundred and twenty days in any one year. (See sec. 20, p. 21–22, of the acts of 1859–1860.) It seems to us an entire misapprehension to suppose that the obligation of those banks to pay coin in redemption of their notes arose out of anything contained in the act of 8th February, 1860. The Congress of the United States alone had the right "to coin money and regulate the value thereof," and the State was prohibited to make "anything but gold
517 and silver coin a tender in payment of debts," and the act of 1860 upon its face assumes the fact that the notes of the banks it was intended to regulate were necessarily redeemable in gold or silver coin, and in nothing else, and wholly omits any express requirements as to the manner in which such notes should be ultimately redeemed. It is impossible, therefore, to infer any intention on the part of the general assembly in passing ch. 5 of the acts of the extra session of 1861, to change the requirements of the pre-existing law, as to the medium in which the circulating notes of all the banks in the State to be issued after the pas-
518 sage of the act should be payable. That all the notes of all the banks issued before the passage of the act under consideration were legally redeemable in gold and silver coin, and not in any other way, will not be denied. That the act of 1861 attempts, in words, to declare that the notes to be issued by the banks of the State, after its passage, should be redeemable in something else than gold or silver coin, or that gold and silver coin should not be demanded in payment of them, cannot be claimed. Had the general assembly intended the act should be understood as having the effect that is now claimed for it on the part of the appellant, does any one suppose it would have left its intention to be inferred from the
519 language it has used, which it must be admitted conveys in terms no such idea. On the contrary, the very fact of the suspension of

payment in specie for a limited time, that is, till 1st July, 1862, at which time, by the terms of the act, payment in specie was to be resumed, carried along with it the further fact that between January, 1861, and July, 1862, payment in specie was the payment the law required of the banks for all their notes, and that such payment, between January, 1861, and July, 1862, was deferred or dispensed with by the general assembly, for reasons which it deemed satisfactory. But the act wholly omitted to provide that between January, 1861, and July, 1862, the notes to be issued should
520 be redeemable in anything other than gold or silver coin.

The act made no distinction between notes issued before its passage and notes to be issued afterwards. Suspension of payment of all of them was authorized. And so, when the time for resumption came, all of them, those issued during the suspension as well as those issued before the passage of the act, were to be redeemed in specie. The sole purpose of the general assembly was to waive the rights or prerogatives of the State for a definite time, upon the assumption that for the time the interests of the general public would be thereby subserved. The language used was to permit the banks which had accepted the provisions
521 of the act of February 8th, 1860, "to suspend and remain in a state of suspension of specie payment until 1st July, 1862." It applied to no other banks, and to convey the idea that the act was intended to affect only the rights or prerogatives of the State, the last proviso to section one (1) is in these words "that nothing contained in this act shall be construed to affect the rights of individuals against the said banks." Did the purpose of the act not appear to us as plainly as it does, we should feel bound to put the construction upon it we have adopted, since that contended for by the appellant, in our opinion, would render the
522 act obnoxious to the provisions of the Constitution of the United States to which we have already referred.

The notes in question, in our judgment, have always been payable by law in gold or silver coin in the sense of the 12th section of the charter of the Bank of Tennessee. On their face, too, they are payable on demand. The 12th section was unquestionably put into the charter in order to give the notes of the bank additional credit. The manifest policy of the State was to support the credit of the bank, and the act of January, 1861, is itself evidence of that policy. To give it the construction which is claimed for it by the appellant would be to suppose that the State
523 intended to weaken the bank by withdrawing a guaranty of its notes, which up to that time had been deemed essential to the ben'ficial working of the bank. When it was necessary to come to the relief of all the banks by permitting them to suspend specie payment temporarily, certainly was not a fit time for the State to withdraw from the bank, of which it was the sole owner, and whose prosperity had, from its beginning, been a cherished object, the support which up to that time had been assumed to be a necessity. The State undoubtedly had the right to waive the requirement of the 12th section of the charter so far as it required the notes referred to in it to be payable in gold and silver coin on
524 demand, and were we to admit that the act of January, 1861, had the effect of making the notes of the Bank of Tennessee issued after its passage payable differently from those issued before that date, we should rather conclude that the State waived the requirement that the notes

issued after that date should be payable in gold and silver on demand, than that it intended wholly to withdraw its guaranty from such notes.

It is quite probable that this last question has been closed by the decisions already made in this case by the Supreme Court of the United States and by this court, and is not now open for consideration. When
525 the case was last here this court said, "If the notes were not issued in aid of the rebellion, it is manifest that it was the duty of the defendant, as tax-collector, to receive the bills tendered by plaintiff in payment of his taxes." (Keith v. Clark, 4 Lea., p. 723.)

The question suggested in the quotation seems to have been the only one which the court then regarded as undecided. Without determining whether that was so or not, we have thought it best to consider the question and to give our conclusion upon it as if it was properly presented for decision.

526 We have not particularized in this opinion all the instructions asked for by the appellant and declined by the court, as they are quite numerous and cover many pages of the record. We have passed upon all the questions suggested in the oral arguments and in the briefs of the counsel, and all that occurred to us as properly presented by the record. To have discussed the instructions not noticed separately would have been an unnecessary waste of time.

The result is that we find no error in the record, and the judgment of the court below must be affirmed.

WM. M. RANDOLPH,
Special Judge.

527 *Judgment.—Entered Saturday, June 3rd*, 1882.

E. A. CLARK, TAX-COLLECTOR, } #270. L. D., 13th cir.
v.
JOHN Y. KEITH. }

This cause having been heard on a former day of the present term, the Hon'l. William M. Randolph sitting as special judge in the place and stead of Hon'l. Thomas J. Freeman, who was incompetent, and having been argued by counsel and fully considered by the court, and it appearing that in the record, proceedings, and judgment of the court below there is no error, it is therefore considered that the judgment aforesaid be in all things affirmed, and that the defendant in error recover of the
528 plaintiff in error the sum of forty dollars, the amount of taxes wrongfully collected from him, and also the costs of this cause in this court and the court below. And it appearing that the said E. A. Clark, tax-collector, &c., has defended this suit in good faith, and has paid over the amount of this judgment to the treasurer of the State, it is further considered that said sum of forty dollars, together with the cost of this cause in this court and the court below, be paid by the treasurer of the State of Tennessee, and that the comptroller issue his warrant therefor.

Order for writ of error.—Entered Wednesday, June 7th, 1882.

529 E. A. CLARK, TAX-COLL'R, } #270. L. D., 13th cir.
v.
JOHN Y. KEITH. }

From the judgment heretofore rendered herein plaintiff in error prays,

and there is granted him, a writ of error to the next term of the Supreme Court of the United States at Washington, upon giving bond and security, conditioned, as by law required, in the penalty of five hundred dollars.

Petition.—Filed June 7th, 1882.

To the Hon. James W. Deaderick, chief justice of the supreme court of Tennessee:

The petition of E. A. Clark, as tax-collector, who by law is made
530 the collector of State and county taxes for and within the county of Madison, State of Tennessee, against John Y. Keith.

Petitioner respectfully represents unto your honor that lately in the supreme court of Tennessee there was pending a cause wherein petitioner was plaintiff in error and John Y. Keith was defendant in error, in which a final judgment was rendered in said supreme court at its April term, 1882, against petitioner and in favor of defendant in error.

Petitioner would further represent unto your honor that in said cause and proceedings there was drawn in question one of the matters described in the 25th section of the judiciary act of the United States, to wit, the construction of sec. 4 of art. 14 of the Constitution of the United
531 States, or so much of said section as is in the following words: "But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States," and the application of said constitutional provision to the facts of the cause.

The defendant in error being indebted to the State of Tennessee for taxes legally imposed and assessed offered to petitioner, as tax-collector for the State as aforesaid, two twenty-dollar bills of the Bank of Tennessee of what is known and designated as "new" or "Torbett issue" of said bank, which was refused, and petitioner, as said tax-collector,
532 was sued for refusal to take said "new issue" notes. Said "new issue" was issued by the Bank of Tennessee (the State being the only stockholder of said bank) after the State had attempted to secede from the United States, and were issued as alleged by petitioner to aid the rebellion against the United States, and as by law the State of Tennessee has bound itself to pay any judgment against petitioner and other tax-collectors for refusal to take said "new issue," and by the said judgment the State is made to pay said "new issue" issued as aforesaid in violation of the Constitution of the United States, and yet by the judgment
533 in this cause petitioner is adjudged liable to defendant in error for said two twenty-dollar bills of the Bank of Tennessee, issued as aforesaid.

Petitioner further shows that by the said judgment in said causes adjudges that the 12th sec. of the charter of the Bank of Tennessee, created a contract by, with, and between the State of Tennessee and the holders of the bills of the Bank of Tennessee, including the holders of said "new issue" bills, and that by virtue and the force and effect of said contract the petitioner is bound to take said "new issue" in payment of
534 taxes due the State of Tennessee, and thus another Federal question is drawn in issue in said cause.

Petitioner therefore prays that your honor will endorse an allowance of a writ of error, and that the proper citation be signed by your honor to the end that the record and proceedings in said cause may be removed into the Supreme Court of the United States, to the end that said judgment may be corrected, and as in duty bound will *will* ever pray.

BENJ. J. LEA,
Atto. for Petitioner.

STATE OF TENNESSEE:

Supreme court at Jackson, April term, 1882.

535 The writ of error prayed for in the foregoing petition*er* is granted and allowed in pursuance of law in such case. The petitioner, plaintiff in error, will execute a good bond in the sum of five hundred dollars, to be approved by me.

JAS. W. DEADERICK,
Chief Justice of Supreme Court of Tennessee.

Bond.—Filed June 7th, 1882.

Supreme Court of United States.

Know all men by these presents that we, E. A. Clark, as tax-collector, are held and firmly bound unto John Y. Keith in the sum of five
536 hundred dollars, to be paid to the said John Y. Keith, executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals; dated this day of June, 1882.

Whereas the above-named E. A. Clark, as tax-collector, hath prosecuted a writ of error appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Tennessee, sitting at Jackson, for the western division of the State:

Now, therefore, the consideration of this obligation is such
537 that if the above-named E. A. Clark, as tax-collector, shall prosecute his said writ of error appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

E. A. CLARK. [SEAL.]
J. B. CLARK. [SEAL.]

Approved by me this 7th day of June, 1882.

JAS. W. DEADERICK,
C. J. Supreme Court of Tennessee.

538, 539 THE STATE OF TENNESSEE:

I, John H. Freeman, clerk of the supreme court of said State, for the western division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect, and complete transcript of the record on the last appeal in the case of E. A. Clark, tax-collector, &c., plaintiff in error, against John

Y. Keith, defendant in error, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court at office, in the city of Jackson, this 3d day of October, A. D. 1882, and of the Independence of the United States the 107th year.

[SEAL.] JNO. H. FREEMAN, *Clerk*,
By D. P. DAVIS, *D. C.*

540 United States of America to John Y. Keith, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October, 1882, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the circuit and western district of Tennessee, wherein E. A. Clark, as tax-collector, is plaintiff and you are defendant in error, to show cause, if there be any, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the honorable James W. Deaderick, chief justice of the supreme court of the State of Tennessee, this 7th day of June, 1882.

JAS. W. DEADERICK,
Chief Justice.

No. . Circuit court of the United States, western district of Tennessee. vs. . Citation. Filed the day of , A. D. 187 . H. E. Andrews, clerk. , D. C.

I acknowledge service of the within writ this 10th day of June, 1882.

JOHN G. KEITH.

541 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of Tennessee, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea, which is in the said supreme court before you, between E. A. Clarke, as tax-collector, plaintiff in error, and John Y. Keith, defendant in error, a manifest error hath happened, to the great damage of the said E. A. Clarke, as tax-collector, as by complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1882, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme

Court of the United States, and the seal of said circuit court, at Memphis, this 5th day of June, A. D. 1882, and 10' of American Independence.

[SEAL.] BELL W. ETHERIDGE, *Clerk.*

Allowed by me this 7th day of June, 1882.

JAS. W. DEADERICK,
Chief Justice Supreme Court of Tennessee.

(Indorsed:) No. . Circuit court of the United States, western district of Tennessee. E. A. Clark, as tax-collector, vs. John Y. Keith. Writ of error. Issued the 5th day of June, A. D. 1882. Bell W. Etheridge, clerk.

(Indorsement on cover:) No. 1159. E. A. Clarke, tax-collector, &c., plaintiff in error, vs. John Y. Keith. Tennessee sup. court. Filed 13th November, 1882.

OFFICE SUPREME COURT U. S.
FILED
DEC 11 1882
JAMES H. MCKENNEY, Clerk.

16-464

Supreme Court of the United States,

OCTOBER TERM, 1882.

E. A. CLARK, Tax Collector, Plaintiff in Error,

vs.

JOHN Y. KEITH, Defendant in Error,

Argument for Plaintiff in Error on Motion to Dismiss Writ of Error.

B. J. Lea, Att'y General of Tennessee, Henry Cooper,
Horace H. Harrison, John H. Savage,
Attorneys for Plaintiff in Error.

E. A. CLARK, COLLECTOR, v. JOHN Y. KEITH. } ERROR TO THE SUPREME COURT OF TENNESSEE.

This cause was before this Court at the October Term, 1878, when it was reversed and remanded to the Supreme Court of Tennessee. Then this Court was asked to dismiss the writ of error. The ground assumed in support of the motion was, that the Court ought to presume that the State Supreme Court did not decide the question which the Court below did, but affirmed the judgment upon the ground that, by the laws of Tennessee, no suit could be brought against the State or against the collector of taxes, and that the Justice of the Peace who first tried the case, and the Court to which the appeal was taken, had no jurisdiction.

This Court, in 1878, overruled the motion to dismiss, and exercised jurisdiction and reviwed the action of the Supreme Court of Tennessee on the only question raised by the record, which was whether the 12th section of the charter of the Bank of Tennessee constituted a contract, which brought the issues of the Bank after the 6th May, 1861, within the protective clause of the Constitution of the United States against impairing the obligation of contracts by State laws.

This Court held that there was nothing in the case then before it, to warrant the conclusion that these notes of the Bank, issued after May 6th, 1861, were issued for the purpose of aiding the rebellion, or in violation of the laws or the Constitution of the United States, and that it could not be inferred that they were issued in violation of any Federal authority.

The majority of this Court said, "We shall, when the matter is presented properly to us, be free to determine, on all the considerations applicable to the case, whether the notes that may be then in controversy, are protected by the provisions of the Constitution or not, and that is the only question of which, in a case like this, we would have jurisdiction."

This case is now again before the Court, and a motion is made to dismiss the writ of error upon the ground that this Court has no jurisdiction to hear and determine the cause as there is no Federal question involved in it.

There certainly *was* a Federal question in the case when it was before this Court in 1878. The Court *then*, in face of a motion to dismiss for want of jurisdiction, and solemn argument thereon, entertained jurisdiction and considered and remanded the cause.

It is difficult to see how, if this Court had jurisdiction *then*, it has not jurisdiction *now*, or when it was that the Federal question which was in the cause in 1878, dropped out of it.

The same question which was before the Court in 1878, is before it now, or will be before it if the cause is heard, viz: does the 12th section of the Bank charter constitute a contract which renders the State liable for the issues of the Bank after May 6th, 1861.

It was held by this Court, in 1878, that unless there is something in the relation of the State of Tennessee and the Bank, after the date mentioned, to the Government of the United States, or something in the circumstances under which the notes now sued on were issued, that will repel the presumption of a a valid contract under the 12th section or will take the contract out of the operation of the protecting clause of the Federal Constitution, there was a valid contractto receive the notes for taxes, etc, and that the law which forbade this to be done, was unconstitutional and void; but while there was nothing showing that the notes sued on were issued in aidof the rebellion, or in violation of the Constitution and laws of the United States, it was clearly intimated by the Court that if they were so issued they wouldnot be receivable for taxes.

If it is not shown in the record now filed that the notes of the Bank, issued after May 6th, 1861, were issued in aid of the rebellion *or in violation of the laws or the Constitution of the United States*, then it is conceded by the plaintiff in error that this Court has no jurisdiction on this appeal in error.

If, however, it is so shown, this Court will decide that such issues of the Bank of Tennessee are not receivable for taxes under the 12th section of the Bank charter.

This court would moreover decide, if it is shown in the record now filed that these issues of the Bank were emitted for the purpose of aiding the rebellion, that they were illegal and void under the XIVth Amendment to the Constitution of the United States.

Will this Court determine the question, which is necessarily the vital one on the merits, *in advance on a motion to dismiss the writ of error for want of jurisdiction?*

The Federal question in the very nature of the case must still be involved in the suit.

The Supreme Court of Tennessee in its recent decision of the cause upon which this writ of error is prosecuted, has held that the notes sued on are receivable for taxes under the contract in the 12th section of the Bank charter, and this decision is based upon the failure of plaintiff in error, in the judgment of that Court, to show that the notes were issued in aid of the rebellion.

We insist that on the pending motion, the Court will look to the transcript to see if there is any Federal question in the case, rather than for the purpose of determining whether the fact that these "new issues" of the Bank were emitted or used in aid of rebellion, has been satisfactorily proven or not.

The Court has but to look to the opinion of the Supreme Court of Tennessee, (page 121 of the transcript *et seq.*,) embodying the charge of the Judge to the jury, and to the instructions which were given, and those which the judge was asked to give and refused to give, to see that the question of whether the "new issues" of the Bank were emitted in violation of the Federal Constitution and therefore were not embraced in the contract contained in the 12th section of the Bank charter was distinctly made; and the attention of the Court is called to the petition for the writ of error in this cause, (on page 129 of the transcript.

We refer to a portion of the charge to the jury, for the purpose of making the point, that not only was the Federal question involving the construction of section 4 Art. 14, of the Constitution of the United States drawn into the cause, but that the decision on the verdict of the jury was against the immunity specially set up and claimed under said section 4 of the 14th Article of the Constitution, and we call attention to the charge

(page 122 and 123 of the transcript) to suggest to the Court that while this Court will never review the facts in a common law action, where the facts are passed upon by a jury whose findings is by the State law conclusive, yet that for the most obvious reasons it would not do for this Court in deciding on a matter where is drawn in question an immunity such as the one claimed and specially set up in this case, to permit the verdict of a jury in a State Court, to determine the question finally so as to cut off revision by this Court.

The points in the charge, to which attention is called, are as follows:

"If you find from the evidence that the volume of currency of said Bank had become reduced by reason of aid, given by said Bank to the rebellion, and that it became necessary, in order to transact the ordinary and legitimate business of the Bank to meet the lawful demands on said Bank, to sign and issue what is known as the "Torbett" or "new issue," then bills of the Bank so signed and so issued are receivable by the State for taxes due the State."

"If the bills of the Bank were signed and issued for a lawful purpose and afterwards came into the hands of the agent of the Rebel States or Confederate States Government, and were used to aid the rebellion, the bills of said Bank, so signed and so issued, are receivable by the State for taxes due the State."

The Judge further charged the jury (page 123 of the transcript) that it would not be sufficient to show that the issues of the Bank in circulation on the 6th of May 1861, where exhausted in the purchase of Tennessee war bonds, or in paying the checks of the military bonds, and that thereby it became necessary for the Bank to put in circulation the Torbett issue in order to properly carry on its business. If the proof shows that some of the notes of the Bank were issued in aid of the rebellion, and others were issued and paid out in due course of banking, but the proof fails to show to which class these two notes belong, then, under the decision of the Supreme Court fixing the burden of proof on the defendant, (defendant below,) your verdict should be for the plaintiff.

The Court, we think, without elaboration of the suggestion that the finding of the jury upon such a question as the one involved in this case, under such a charge as that which, no doubt, brought about the verdict, ought not to prevent the revision of the question so decided will ~~really~~ readily see that if such finding could not be

reviewed and overturned the salutary jurisdiction vested in this Court by the 25th section of the judiciary act upon the most delicate and vital questions which can come before this tribunal might in many instances, be defeated, and the matter determined finally in the State Court.

It must be obvious that the last quoted point on the charge of the Judge to the jury, received some degree of sanction from the opinion of a majority of this Court, when this cause was before it in 1878, fixing the burden of proof on the present plaintiff in error to show that the notes, known as the new issue were issued in aid of the rebellion. This vitally important question in the case was decided by a divided Court, Mr. Justice Miller delivered the opinion of a majority of the Court, and the Chief Justice and Justices Bradley and Harlan, each delivering a separate dissenting opinion. The fact that the decision in the cause was by a divided Court, and the question involved was deemed of so much importance as to induce three members of this Court to present each a dissenting opinion, it is very respectfully submitted, would seem to justify us in saying that the allowance of the pending motion will prevent the State of Tennesee from urging, as we intend to do most earnestly on the hearing, if the motion to dismiss is disallowed, that this Court will reconsider its action in holding that as to the notes of the Bank is sued after Tennessee had gone into rebellion the burden of proof was upon the plaintiff in error, (virtually the State) to show that they were issued in aid of the rebellion.

We beg to say that if this Court allows the motion now pending, the State of Tennessee will be deprived of the means of further resisting a liability for an unascertained, but certainly very large amount of notes of the Bank of Tennessee issued during the time that Tennessee was actually in rebellion, and which liability, if fixed upon her by this Court will seriously embarrass the State in the matter of her revenues, and we say this simply to emphasize the importance which attaches to the question now before the Court on the motion to dismiss.

B. J. LEA, Attorney-General of Tennessee.
HENRY COOPER,
HORACE H. HARRISON,
JOHN H. SAVAGE,
Attorneys for Plaintiff in Error.

OFFICE SUPREME COURT U.S.
FILED
DEC 9 1882
JAMES H. MCKENNEY, Clerk.

No. 1159.

In the Supreme Court of the United States

—ERROR TO—

THE SUPREME COURT OF TENNESSEE.

E. A. CLARK, Collector,

v.

JOHN Y. KEITH.

Brief of R. McP. SMITH,
of counsel for defendant,
upon the motion
To dismiss for want of jurisdiction, and to affirm.

E. A. CLARK COLLECTOR, v. JOHN Y. KEITH. } ERROR TO THE SUPREME COURT OF TENNESSEE.

This case is here by writ of error to the supreme court of Tennessee; and we now move to dismiss for want of a federal question giving this court jurisdiction; and with this motion we unite a motion to affirm, because the question on which the jurisdiction depends, if there be any, is so frivolous as not to need further argument. (Rule 6, paragraph 3, and amendment; *Micas* v. *Williams*, 104 U. S. 556.)

This was an action brought under the state act of March 21, 1873, (Acts 1873, ps. 71–73) against a tax-collector, to enforce the state's obligation to receive for taxes the Torbett or new issue of the Bank of Tennessee,—its emissions after May 6, 1861.

This obligation was by virtue of section 12 of the bank's charter. (Nicholson's Statute Laws of Tennessee, p. 26):

"Be it enacted that the bills or notes of the said corporation orignally made payable, or which shall have become payable, on demand, in gold or silver coin, shall be receivable at the treasury, and *by all tax collectors* and other public officers, *in all payments for taxes*, or other moneys due to the state."

Afterward, section 6, Schedule to the Constitutional Amendments of 1865, provided:—

"All laws, ordinances, and resolutions, of the usurped state government passed on or after the 6th day of May, 1861, providing for the issuance of state bonds, also all notes of the Bank of Tennessee or any of its branches issued on or after the 6th day of May, 1861, and all debts created or contracted in the name of the state by said authority, are unconstitutional, null and void, and no legislature shall hereafter have power to pass any act authorizing the payment of said bonds or debts, or providing for the redemption of said notes."

And, afterward, section 51, act of March 25, 1873, (Acts 1873, p. 182) designated what should be received for taxes, excluding the new issue of the Bank of Tennessee.

The act of March 21, 1873, already mentioned, provided that a party claiming the right to pay state taxes in other funds than those demanded by the collector might, after payment under protest in the funds demanded, then sue the collector, the state to pay any judgment in favor of the plaintiff on the merits.

This action was commenced under this act, before a justice of the peace of Madison County, and appealed to the circuit court, which justified the refusal of the notes in question for taxes, upon the ground that section 6 of the Schedule of 1865 was a valid exercise of state authority, because the notes involved, having been issued while the state was in rebellion, were outside of the protection of the Constitution of the United States. This ruling was affirmed by the state supreme court, whose decision was reversed by this court. *Keith* v. *Clark*, 97 U. S., 454.

This decision of this court established the right of the notes to be received for state taxes, *unless they had been issued in aid of the rebellion.*

At the subsequent trial in the state circuit court, this, therefore, was the sole question of the case. As this was meant to be a test-case, the widest latitude was given to the defence in the admission of evidence to taint the notes, if possible, and it was thought best to have the jury return a special verdict.

"The findings of fact by the jury, as recorded in the special verdict, were, in substance, that the bills of the bank tendered by plaintiff to defendant in payment of his taxes, were regularly issued by the proper officers of the bank, and put in circulation; that defendant as collector refused to accept the same, and that plaintiff protested against such refusal, and thereupon paid his taxes in the lawful money of the United States; that he instituted this suit to recover the money so paid, within thirty days thereafter; that there was no evidence upon what contract or consideration these identical bills were issued or paid by the bank; that the plaintiff purchased the bills in open market, without knowledge *that the same were issued in aid of the rebellion*; and that the Torbett issue of the bank was received and paid in the ordinary course of business by the bank and its branches." (Record, folio 16).

There is a mispunctuation in the record, a semi-colon being interpolated just before the clause italicized in the foregoing quo-

tation, the effect of which is to make the jury find that the bills involved were issued in aid of the rebellion; whereas the words "without knowedge" and the italicized words form one clause. The meaning is perfectly plain, however. Mispunctuation occurs also in folio 17, which (as corrected) is as follows:—

"As to whether any contract, arrangement, or agreement, was entered into between the governor of the state and the military board, or either of them, on the one part, and the Bank of Tennessee in its corporate capacity, on the other, that the Torbett issue of the bank should be issued and put in circulation in aid of the rebellion against the government of the United States, and, if so, whether it was actually issued and put out by the bank for that purpose, the jury failed to agree, and announced their disagreement in the special verdict."

Nevertheless, as the jury had found that there was no evidence upon what contract or consideration the bills involved were issued, and as the burden of proving that they were issued in aid of the rebellion devolved upon the defendant, the court, upon this special verdict, gave judgment for the plaintiff.

This judgment, upon appeal, was reversed by the state supreme court, upon the ground that it was not justified by the special verdict, which, as it stood, exacted the assumption that the bills in question "were, under a contract or agreement between the state and the bank, actually issued and put in circulation by the bank in aid of the rebellion." (Record, folio 18).

The opinion of the state supreme court is reported in 4 Lea, 718, and is set forth in the record, folios 18–32.

The court distinctly and explicitly recognized that the sole issue in the case was one of *fact*, saying (folio 22), after referring to the decision of this court in 97 U. S.:—

"It follows that *the whole question is resolved into one of fact, to be determined by a jury according to the ordinary rules of evidence.*"

This question of fact, accordingly, was, after this reversal, retried by the circuit court, resulting in a verdict and judgment for the plaintiff, and this judgment was affirmed by the state supreme court, whose opinion is reported in 8 Lea, 703, and set forth in the record, folios 464–527.

The present writ of error is brought to reverse that affirmance.

After reading the foregoing statement, your Honors will wonder what federal question was supposed to be involved in the decision that is assailed. The Attorney General of the State of Tennessee in his petition for the allowance of this writ of error, (record, folios 530–535,) has set forth the grounds upon which he claimed to have it allowed. I quote from the petition:

"* * * in said cause and proceedings, there was drawn in question one of the matters described in the 25th section of the judiciary act of the United States; to wit, the construction of sec. 4 of Am. XIV to the Constitution of the United States, or so much of said section as is in the following words: 'But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States;' and *the application of said constitutional provision to the facts of the cause.*"

The italics are mine, to call attention to the effort to make the question of *fact* a part of the federal question.

Then, after explaining how the receipt of the bills for taxes, if issued in aid of the rebellion, would contravene the XIVth Amendment, the petition proceeds:

"Petitioner further shows that the said judgment in said cause adjudges that the 12th section of the charter of the Bank of Tennessee created a contract by, with, and between, the State of Tennessee and the holders of the bills of the Bank of Tennessee, including the holders of said 'new issue' bills, and that, by virtue, and the force and effect, of the said contract, the petitioner is bound to take said 'new issue' in payment of taxes due the State of Tennessee; and thus another federal question is drawn in issue in said cause."

This is the best our learned and able Attorney General could do to conjure up a federal question for this writ of error.

Now, the jurisdiction of this court over state courts falls into three categories, (R. S. §709):—

1st. "Where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity;"

2nd. "Where is drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the Constitution treaties or laws of the United States, and the decision is in favor of their validity."

3rd. "Where any title, right, privilege, or immunity, is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised, under the United States, and the decision is

against the title, right, privilege, or immunity, specially set up or claimed by either party under such Constitution, treaty, statute, commission, or authority."

The attempt here is to rest the jurisdiction upon the 2d and 3d categories, as quoted by me.

First, it is urged that the state decision was in violation of an immunity of the state under the XIVth Amendment, not to pay any obligations incurred in aid of the rebellion;

Second, that it held section 12 of the bank's charter to be a valid contract, obligating the state to receive for taxes notes issued by the bank in aid of the rebellion, and thus upheld a state statute in violation of the XIVth Amendment.

It is only in *this* aspect that the state decision in favor of the contract could be reviewable here. Where the state court decides away a contract, and thereby gives effect to adverse legislation, there the question of contract or no contract is cognizable here; and, indeed, the endeavor to give force to such legislation has generally been directed toward degrading the contract from that *status*; since, if it were not a contract, and a valid contract, the legislation cannot have impaired the obligation of a contract. But where the state court upholds the federal ægis, to protect the contract, there the decision conceding the contract *status* is not reviewable here.

Taken as I construe it, the petition's second assignment virtually merges into the first; as both alike presuppose, and rest upon, the asssumption, negatived by the jury, that these notes were issued in aid of the rebellion.

So that unless the question of fact, whether the bills in question *were* issued in aid of the rebellion, can be regarded as open for revision by this court, there is no federal question in the record.

In other words, there is no federal question here unless this court will revise the finding of the jury in the state circuit court upon a question of pure fact.

Now, I need not argue such a point as that this court will not revise the verdict of a jury.

In *Bridge Company* v. *Railroad Company*, 92 U. S., 315, it was held that where a federal right was set up in a state court in

a chancery suit, or in any character of case in which the highest court of the state could revise the facts as well as the law (for instance, I suppose, a *mandamus* suit), there this court might review the decision of the state court upon both the law and the facts, so far as might be necessary to determine the federal right; but that "in cases where the facts are submitted to a jury, and are passed upon by the verdict, in a common-law action, this court has the same inability to review those facts in a case coming from a state court that it has in a case coming from a circuit court of the United States."

By the VII Amendment to the Constitution of the United States, it is provided :—

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and *no fact tried by a jury shall be otherwise re-examined* in any *court of the United States than according to the rules of the common law.*

In *The Justices v. Murray*, 9 Wal., 274, it was held that the above italicized portion of the VIIth Amendment applies to the facts tried by a jury in a cause in a state court.

Now, in the state court, in the present case, it was held that if the notes in question were issued, voluntarily or involuntarily, in aid of the rebellion, whether under any contract with the rebel authorities or not, and whether the original plaintiff here was an innocent purchaser or not, then, in that event, they were not receivable for taxes by the state.

The federal contention of our adversaries was freely conceded to them. Whether correctly or not, it was ruled that the XIVth Amendment included these notes, so that if they were issued in aid of the rebellion, they came within its prohibition.

There was, as alleged in the portion of the petition italicized by me, a question of "the application of said constitutional provision to the facts of the cause;" but *this* question was simply the question of fact whether the notes involved were issued in aid of the rebellion. If they were, the XIVth Amendment applied "to the facts of the cause"; and if they were not, it did not.

Since the decision of this court in this case, in 97 U. S., there

has been no substantial question therein, except this simple question of fact.

There is certainly no vestige of a federal question in this record.

It will hardly be contended that the rulings of the state court upon questions of evidence are reviewable here, upon the ground that otherwise the state courts might shut the door against the operation of the XIVth Amendment, by ruling out evidence tending to implicate obligations as incurred in aid of rebellion. But if this far-fetched contention were conceded, we should be entitled to an affirmance, under the second branch of our motion. *Micas* v. *Williams*, 104 U. S. 556.. For, the rulings of the state supreme court upon the questions of evidence in this case were too obviously and indisputably correct to admit of any controversy whatever.

It was held, in substance, that the presumption, in the absence of proof to the contrary, was that the notes involved were legally issued; that if the bank's funds on hand on May 6, 1861, were exhausted in aid of the rebellion, so that the Torbett issue had to be put out to meet the demands of business, this, although resulting from the existence of the rebellion, was not an emission in aid of the rebellion; that this meant an issue in some transaction connected with the rebellion; that proof that the bank officers sympathized with the rebellion was not evidence that they issued these notes in aid of the rebellion; and that the burden of proof as to the guilt or innocence of the notes in suit could not be shifted by showing that more than half of the entire Torbett issue was emitted in aid of the rebellion.

But it is proper to remark that this last was merely an abstract ruling, as there was no pretence of any evidence implicating any definite portion, much less half, of the Torbett issue as put out in aid of the rebellion.

The fullest latitude, as to evidence, was conceded to the defence, for the obvious reason that there might be no cavil as to the right of this case to be regarded as a test-case in which the utmost possible contest had been made against the receipt of the Torbett issue for state taxes. The widest range was allowed as to the entire issue, so as, if possible, to taint the particular notes involved, as included therein.

It is perfectly apparent that this writ of error was brought here merely for delay, and that it ought to be dismissed for want of jurisdiction; or, that if there is any ghost of a federal question to be evoked from this record, it is too shadowy and unsubstantial to require to be exorcised by argument.

R. M. P. Smith,
Of Counsel for defendant.

16-464

OFFICE SUPREME COURT U.S.
FILED
DEC 3 1892
JAMES H. MCKENNEY, Clerk

CLARK, COLLECTOR,
vs.
KEITH.

ERROR TO THE SUPREME COURT
OF
TENNESSEE.

MOTION TO DISMISS AND, COUPLED THEREWITH, MOTION TO AFFIRM.

Under Rule 6, paragraph 3, as amended, we move to dismiss the writ of error in this case for want of jurisdiction, there being no federal question in the record.

And with this motion we unite a motion to affirm the judgment of the Supreme Court of Tennessee, upon the ground that, although the record may show that this Court has jurisdiction, it is manifest that the question on which the jurisdiction depends is so frivolous as not to need further argument.

Sp. HILL and
R. MCP. SMITH,
Counsel for Appellee.

No. 1159.

CLARK, Collector vs. *KEITH.*	*Error to the Supreme Court of Tennessee.*

Motions to Dismiss and to affirm.

16-464

SUPREME COURT OF THE UNITED STATES.

No. 1159.

E. A. CLARK, TAX COLLECTOR, &c., PLAINTIFF IN ERROR,

vs.

JOHN Y. KEITH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

BRIEF OF

SP'L HILL,

OF COUNSEL FOR DEFENDANT IN ERROR.

ON MOTION TO DISMISS AND AFFIRM.

FILED DECEMBER 9th 1882.

This cause is in this Court for the second time upon a writ of error to the Supreme Court of Tennessee, and is now being heard upon a motion of the defendant in error to dismiss the writ for want of jurisdiction in this Court; and united with this motion is also the motion of the defendant in error to affirm the judgment of the Supreme Court of Tennessee on the ground that although the record may show that this Court has jurisdiction, (which is denied) it is manifest that the writ of error was taken for delay only; and that the *question* on which jurisdiction depends is so *frivilous* as not to need further argument. (See Rule 6th.)

A brief statement of the case, as appears, from the record, may not be inappropriate.

STATEMENT.

The State Bank of Tennessee was chartered by an act of the General Assembly of the State of Tennessee in 1838. The 12th section of the charter reads as follows:

"Be it enacted, That the notes or bills of said corporation originally made payable on demand in gold or silver coin shall be receivable at the Treasury of this State and by all tax collectors and other public officers in all payments for taxes and other moneys due to the State."

The defendant in error (the plaintiff below) being a citizen and tax payer of Madison county, Tennessee, and a holder of the notes or bills of the State Bank, tendered to the plaintiff in

error, who was at that time the Tax Collector for Madison county, the two *genuine* notes or bills of said bank exhibited in the record in payment of his State taxes, which the Collector refused to receive on account of the 6th section to the amended Constitution of the State, adopted in 1865, which declared that all the notes of this bank issued after the 6th of May, 1861, to be null and void, and forbid any Legislature of the State to enact any laws providing for their payment.

And thereupon the defendant in error paid his taxes in currency, under protest, and sued the Collector for the money so paid, as was provided under the act of the General Assembly of the State of the 21st of March, 1873.

This suit was commenced before a Justice of the Peace for Madison county, Tennessee, and taken by appeal to the Common Law and Chancery Court of said county, where judgment was rendered against the defendant in error, and was appealed to the Supreme Court of Tennessee, where the judgment was affirmed without any written opinion or other evidence of the grounds on which it was affirmed, and thereupon the cause was brought to this court upon writ of error, and was heard at its October term, 1878, Mr. Justice Miller delivering the opinion of the Court, reversing the judgment of the Supreme Court of Tennessee, and remanding the cause for a new trial. (See Keith vs. Clark, 97 U. S. Reports, 454.

This whole case is reviewed in this able opinion of the learned Judge, who decides in substance:

First—"That the 12th section of the bank charter was a *contract* by the State with every note holder, and was within the protection of that provision of the Federal Constitution, which forbids any State to pass any law impairing the obligation of a contract. And hence the 6th section to the amended Constitution of the State, adopted in 1865, was void, being in conflict with this provision of the Federal Constitution.

Second—"That there was no evidence in the Record that the notes offered in payment of taxes were issued in aid of the rebellion, or on any consideration forbidden by the Constitution or

laws of the United States, and the presumption is that they were issued in the legitimate business of the bank, and it is for the party asserting their invalidity to *set up and prove the facts.*

Third—"The attempt of the State of Tennessee to separate itself from the Union did not destroy its identity as a State, nor free it from the binding force of the Constitution of the United States, and that all its acts, legislative and otherwise during the rebellion are valid and obligatory on the State now, except where they were done in *aid* of the rebellion, or are in conflict with the Constitution, and laws of the United States, or were intended to impeach its authority.

The case being reversed and remanded to the Supreme Court of Tennessee, it was there remanded to the Law Court of Madison County for trial "*de novo*" *before a jury.* When the case was again tried in the Law Court of Madison County before a jury, upon *certain special findings* of the jury, judgment was rendered for the defendant in error, who was the plaintiff below; from this judgment the defendent below appealed to the Supreme Court of Tennessee. The jury on this trial did not find a general verdict, but a special verdict, which was in substance—that the bills of the bank tendered by the plaintiff in payment of his State taxes were regularly issued by the proper officers of the bank, and put in circulation, and the collector had refused to receive them from the plaintiff below, in payment of his State taxes, and that the said plaintiff had paid his taxes in currency, under protest and brought suit within the time and in the manner prescribed by the statute, etc., etc. But the *jury failed to agree* as to whether the bills were *issued in aid of the rebellion.*

The case was then again heard in the Supreme Court of Tennessee at its April term 1880, Mr. Justice Patterson sitting as special Judge and delivering the opinion of the Court. (See page 3, of printed Record—Clark vs. Keith, 4 Lea, 717.)

The learned Judge delivering this opinion adopts, and follows the opinion of this Court delivered at its October term, 1878, and before referred to, and decides in substance as was held by this Court that the 12th section of the bank's charter *was a contract* within the protection of the Federal Constitution,

and that the 6th section of the amended Constitution of 1865 was void, because in conflict with the Federal Contsitution, forbidding any State to pass any law impairing the obligation of a contract.

That the "*State of Tennessee was bound to receive these notes in payment of taxes,* unless they were issued in aid of the rebellion, and the burden is upon the party asserting the invalidity of the notes to prove they were so issued."

That if the notes were issued in aid of the rebellion the State could not receive them for taxes, because of the 14th amendment to the Federal Constitution.

And in the language of the learned Judge delivering this opinion of the Supreme Court of Tennessee: "It follows that the whole question" (*being whether* the notes were issued in aid of the rebellion) "is resolved into *one of fact,* to be determined by a jury according to the ordinary rules of evidence."

"The law presumes that the bank put the bills into circulation in ordinary course of its business for lawful purposes." (See page 6, printed Record; 4th Lea, p. 727.

And as the jury failed to agree upon this question, the judgment of the Court below was again reversed, and the cause remanded for a new trial.

The only question open in the case being one of *fact,* whether the notes were issued in aid of the rebellion.

It being determined both by this Court and the Supreme Court of Tennessee, and *confessed by the parties,* that if the notes were proven to have been issued in aid of the rebellion, the State would be, not only not bound to receive them for taxes, but expressly forbidden to do so by the 14th Amendment to the Federal Constitution.

It was *never denied* by *any Court* or by any of the parties, that if the notes were issued in aid of the rebellion they were void, under the 14th Amendment. And in the language of the Supreme Court of Tennessee, "*the whole question is resolved into one*

of fact, to be determined by a jury according to the ordinary rules of evidence." And to determine *this question of fact,* the cause was remanded for a new trial before a jury in the Law Court of Madison County. (See page 2, of printed Record.)

And at the March term, 1881, the cause was again tried in said court, before a jury, upon a full charge of the presiding Judge, who charged the jury, in clear and unmistakable terms, that if the notes were issued in aid of the rebellion, they were void and the plaintiff could not recover. (See pages 101 and 102 of printed Record.)

On this trial the jury returned a verdict for the plaintiff, and found that the notes *were not issued* in aid of the rebellion, and upon this verdict judgment was again rendered for the plaintiff below, and the defendant appealed to the Supreme Court of Tennessee.

When the cause was again, and for the third time, heard in the Supreme Court of Tennessee, at its April term, 1882, and there being no error in the record, the judgement below was affirmed in a very able and elaborate opinion, by Mr. Justice Randolph setting as special Judge. (See pages 115 and 116 of printed Record.

It will be readily seen, from the record, that the only question in the case, when reversed and remanded at the April term, 1880, of the Supreme Court of Tennessee, was "*one of fact, to be determined by a jury* in accordance with the ordinary rules of evidence." Were the notes sued on issued in aid of the rebellion?

In the language of Mr. Justice Randolph, delivering the opinion of the Supreme Court of Tennessee, at its April term, 1882, affirming the judgment of the Law Court of Madison county, rendered upon the *verdict of the jury,* that the notes *were not issued in aid of the rebellion*: "When last here (April term, 1880,) the judgment of the court below was reversed, and the cause remanded for a new trial, *solely* on the ground that the jury had not returned a general verdict, but had returned only a *special verdict,* and in that verdict had not found all the necessary facts to support the judgment which the court below had rendered in

favor of Keith, the plaintiff, against Clark, the tax collector, as defendant. The particular, *material fact*, as to which the jury had returned no finding, was whether the notes of the Bank of Tennessee, which Keith had tendered to Clark, as tax collector, in payment of taxes Keith owed the State, had been issued in aid of the rebellion against the Government of the United States. As to this fact the jury reported that they were not able to agree." (See pages 115 and 116, printed Record.)

It will be seen that on the determination of this single and *simple* question of *fact* the whole law suit depended.

There was no other disputed *fact*, and *no* disputed proposition of law in the record. And upon a fair and full charge, the *only constitutional* triers of this question of fact (a jury) have found for the defendant in error, and in favor of the innocence of the notes. And upon this finding by the jury the court could but render the judgment of the law which was accordingly done. The Supreme Court of Tennessee could not review this finding of the jury. And, indeed, if it could, in the language of the Court, in its opinion delivered in this cause at its April term, 1882, affirming the judgment of the Court below, "it is scarcely to be expected that this Court (the Supreme Court of Tennessee) should go into *such a review*, when one of the counsel for the appellant stated, in his oral argument, that had he have been upon the jury, he would have felt obliged, under the instructions of the Court, to have returned the same verdict which the jury did return." Continuing, the Court says: "It may not, however, be improper to remark that the evidence in this case does not seem to us to be any stronger than the evidence in the case of The State and Watson vs. Bank of Tennessee, 5th Baxter 1, was in favor of the Bank, and in that case *this Court* arrived at a conclusion upon *the facts*, the same, in substance, as the verdict of the jury in this case." (See page 119, printed Record).

The clear intimation and almost, if not quite, unequivocal statement in this opinion of the Supreme Court of Tennessee, is that had they the power to try this issue of fact, they could not but find as the jury had found.

The learned counsel for the appellant, whose zeal in this cause

will never be questioned, is driven to confess in open Court, with all his partisan feeling (most natural and proper), that had he have been upon the jury he could not have found differently from them. (See page 119 of printed Record.

And no one yet, with sufficient recklessness, has been found who will question the correctness of the finding of the jury on this issue of fact from the evidence in this record. And indeed if the evidence in this case was now the proper subject of review in this Court, it would be found that so far from establishing that the notes in controversy were issued in aid of the rebellion, the reverse of this proposition is proven almost, if not quite, to a demonstration. The evidence in the record establishes clearly that the "*old issue*" of this bank—the issue prior to 6th of May, 1861—was absorbed in taking up from the State of what is known as "war bonds"—bonds issued to aid the rebellion, and the currency of the bank being thus absorbed, it became necessary for it to issue the new currency to enable it to carry on its *legitimate* business. The "*old issue*" was issued or paid out for the war bonds, and the new issue was issued to supply the deficit in the currency of the bank, created by its taking up the war bonds, and was issued in its lagitimate and ordinary business. But still, singular as it may appear in the face of this plain and truthful statement of the record, this cause is in this Court upon a writ of error to the Supreme Court of Tennessee to reverse the judgment aforesaid, and is now being heard upon the motion of the defendants in error to dismiss the writ for want of jurisdiction, and to affirm the judgment of the Supreme Court of Tennessee on the ground that although this Court has jurisdiction (which is denied), that it is manifest that the writ of error was taken for delay only, and that the question, on which jurisdiction depends, is so *frivolous* as not to need further argument. (See 6th Rule of this Court.)

ARGUMENT.

It is difficult indeed to grasp the principle upon which this Court is expected to assume jurisdiction to review and reverse the judgment of the Supreme Court of Tennessee in this case.

There is no Federal question arising upon this record.

No right of the plaintiff in error under any Federal law or authority was drawn in question in this cause and *denied him* by the Supreme Court of Tennessee.

Every question of Federal law or authority that was drawn in question in this cause was decided in favor of, and not against any right or protection which the plaintiff in error claimed thereunder.

No right secured under any Constitutional or statutory provision or under any other authority of the United States, was drawn in question in this cause and *denied* to the plaintiff in error by the Supreme Court of Tennessee.

The petition of the plaintiff in error assigns in vague and shadowy terms two matters of Federal law or authority which it alleges were drawn in issue.

First—In the language of the petition: "There was drawn in question one of the matters discribed in the 25th section of the Judiciary Act of the United States, to wit: The construction of section 4 of article xiv. of the Constitution of the United States, or so much of said section as is in the following words: 'But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States,' and the *application* of said Constitutional provision to the *facts of the case.*"

The Supreme Court of Tennessee did not *deny* to the plaintiff in error *the right* to defeat a recovery against him upon the notes

sued on, if they were issued in aid of the rebellion, but this right or defense was accorded to him most fully and freely.

The Supreme Court of Tennessee did *not try*, and had no *Constitutional power to try* the question *of fact*, whether the notes were *in fact* issued in aid of the rebellion.

The issue *of fact* under a correct charge of the law was submitted in the Law Court of Madison county to the only Constitutional triers of issues of fact; a jury who found this issue against the plaintiff in error. And upon the appeal, the Supreme Court of Tennessee had no power to rehear or retry the cause upon this question of facts which had been properly submitted to the jury.

This Court will not assume jurisdiction to review or reverse the judgment of the Supreme Court of Tennessee for not doing that which the Court had no constitutional power to do. The Supreme Court of Tennessee did not find the facts, they were properly submitted to a jury in the Courts below who returned them against the plaintiff in error, and upon appeal the Supreme Court could only affirm the judgment of the law on the facts found by the jury, if there was any evidence at all to support the verdict.

This finding of the jury on the *facts* is conclusive.

It is well settled that whenever a judgment of a State Court is taken up for re-examination by this Court, of some decision of a Federal question, the question must be considered as it comes from that Court. (See Meyer vs. Del. R. C. Co., 100 U. S. Reports, 457.)

Mr. Justice Miller in delivering the opinion of this Court in case of Republican River Bridge Co. vs. Kansas and Pacific R. R. Co., 92d U. S. Repts., 317, says: "In Chancery cases or in any other class of cases where all the evidence becomes part of the record in the highest court of the State, the same record being brought here this Court can review the decision of that Court on both the law and the fact so far as may be necessary to determine the right to set up under the act of Congress; but in cases where the facts are submitted to a jury and are passed

upon by the verdict in a common law action, this Court has the same inability to review those facts in a case coming from a State Court, that it has in a case coming from the Circuit Court of the United States."

The VIIth Amendment to the Federal Constitution provides: "In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no *fact* tried by a jury shall be otherwise re-examined in any Court of the United States than according to the common law."

The latter clause—"and no fact tried by a jury shall be otherwise re-examined in any Court of the United States than according to the common law"—has been held to apply to the appelate powers of this Court in cases coming from a State Court in the very elaborate opinion of Mr. Justice Nelson in the case of The Justices vs. Murray, 9 Wallace, 277.

In this case it is distinctly held that under this clause of the VIIth Amendment, this Court has no power to *re-examine the facts* "tried by jury" in any case coming to this Court from the State Courts—than according to the common law. (See The Justices vs. Murray, 7th Wallace, 277.

And it is now too well settled for argument that this Court cannot review upon *writ of error* to the State Court the finding of *the facts* in a Common Law action, where they are submitted to a jury and passed upon by a the verdict, or are found by the Court, the parties waiving the jury, or are found by a referee. (See Republican River Bridge Co. vs. Kansas & Pacific R. R. Co., 92 U. S. Reports, 315; Myrick vs. Thompson, 99 U. S. Reports, 291; Miles vs. U. S., U. S. Reports, 103, page 304.

Therefore, we insist that this Court has no jurisdiction to review and reverse the judgment of the Supreme Court of Tennessee upon this record on account of the question of fact, which was submitted to a jury in the Law Court of Madison county and found against the plaintiff in error.

And it is furthermore insisted for the defendant in error that if

this Court could assume jurisdiction to review this issue of fact upon this record, it would unhesitatingly find the facts to be just as the jury found them, and as the Supreme Court of Tennessee would have found them, and as the learned and zealous counsel for the plaintiff in error confessed he would have found them had he been upon the jury.

Therefore, if jurisdiction could be assumed upon this ground, it is manifest that the writ of error was taken for delay only, and that the question on which jurisdiction would depend is so *frivolous* as not to need further argument; and under this motion of the defendant in error the judgment of the Supreme Court of Tennessee would be affirmed under the 6th rule of this Court. (See Micas vs Williams, 104 U. S. Rept., 556.)

Second—The second matter of Federal law or authority which the petition alleges was drawn in question by the decision of the Supreme Court of Tennessee, is more vague and, if possible, more unsubstantial than the first one assigned. The language of the petition on this subject is as follows, to wit: "That by said judgment in said cause it is adjudged that the 12th section of the charter of the Bank of Tennessee created a contract by and with and between the State of Tennessee, and the holders of the bills of the Bank of Tennessee, including the holders of said 'new issue' bills, and by virtue of the force and effect of said contract, the petitioner is bound to take said 'new issue' in payment of taxes due the State of Tennessee, and that another Federal question is drawn in issue in said cause." (See page 129, printed Record.)

The decision of the Supreme Court of Tennessee, that the 12th section of the bank's charter *did create* a contract by and between the State and the note holder presents no Federal question for review in this Court.

And indeed it did, it is "*res adjudicata*" by the judgment of this Court in this case at its October term, 1878, and also by the judgment of the Supreme Court of Tennessee.

The subject of this second alleged ground of jurisdiction in this Court of this cause has been too often determined by the

Supreme Court of Tennessee, and by this Court in this *identical case*, to require further argument than a simple reference to the opinions of the Supreme Court of Tennessee and of this Court. See Keith vs. Clark, 4 Lea, 719, page 3 of printed Record; Keith vs. Clark, 8 Lea, 705, page 115 of printed Record; Keith vs. Clark, 97 U. S. Reports, 454; see also Furman vs. Nichol, 8 Wallace, 44.

In conclusion, it is insisted, for the defendant in error:

First—That this Court has no jurisdiction in this cause to review and reverse the judgment of the Supreme Court of Tennessee, and the writ of error should be dismissed.

Second—That although the record may show that this Court has jurisdiction (which is denied), still it is manifest that the writ of error was taken for delay only, and that the question on which jurisdiction depends is so frivolous as not to require further argumemt, and the judgment of the Supreme Court of Tennessee should be affirmed.

SP'L HILL,
Counsel for Defendant in Error.